

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

First Montauk Securities Corp., Claimant v. Michael J. Febert, Respondent

Case Number: 04-07612

Hearing Site: Seattle, Washington

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Nature of the Dispute: Member v. Associated Person

**REPRESENTATION OF PARTIES**

For Claimant:

Joel Levinson, Esq.  
First Montauk Group LLC  
Red Bank, New Jersey

For Respondent:

Michael J. Febert  
Pro Se  
Olympia, Washington

**CASE INFORMATION**

Statement of Claim filed: October 21, 2004

Claimant's Uniform Submission Agreement signed: October 22, 2004

**CASE SUMMARY**

Claimant alleged non-payment of certain sums owed to it by Respondent pursuant to a FMSC Registered Representative Agreement that Respondent had signed.

**RELIEF REQUESTED**

Claimant requested \$20,474.39 in compensatory damages, \$6,142.31 in collection fees and reimbursement of \$1,400.00 in NASD fees.

**OTHER ISSUES CONSIDERED AND DECIDED**

Respondent Michael J. Febert did not file with NASD Dispute Resolution a properly executed submission agreement or a Statement of Answer, but he is required to submit to arbitration pursuant to NASD's Code of Arbitration Procedure, and he is bound by the determination of the Arbitrator on all issues submitted. On November 3, 2004, NASD served Respondent with the Statement of Claim via certified mail, return receipt requested and notified him that pursuant to Rule 10302(d), his deadline to file an Answer and Uniform Submission Agreement was November 28, 2004. Respondent signed for and accepted delivery of NASD's November 3, 2004 letter, which included a copy of the Statement of Claim, as evidenced by NASD's receipt on

November 9, 2004 of a return receipt green card that had been signed by Respondent.

On December 1, 2004, NASD provided the parties to this matter with a list of five arbitrators whom the parties could rank or strike; NASD notified the parties that their deadline to do so was December 21, 2004. This letter was not returned to NASD by the United States Postal Service. On January 6, 2005, NASD sent the parties a letter via certified mail, return receipt requested informing them of the identity of the Arbitrator and the date and time of the initial pre-hearing conference. On January 14, 2005, NASD received return receipt green cards from Claimant and Respondent, both of which had been signed for on January 10, 2005.

At the initial pre-hearing conference on February 1, 2005, in which the Arbitrator and both Claimant and Respondent participated, Respondent was ordered by the Arbitrator to submit an Answer to the Statement of Claim on or before February 25, 2005. By letter dated February 7, 2005, NASD notified the parties and the Arbitrator that an additional pre-hearing conference would take place on March 2, 2005. The pre-hearing conference took place on that date, but Respondent did not participate in the conference. On March 2, 2005, the Arbitrator issued an Order stating that pursuant to Rule 10203, this matter would be resolved based on the pleadings and on any documentary evidence filed by the parties, without a formal hearing. She noted in her Order that no Answer had been filed and ordered the parties to submit all evidence and written argument to NASD on or before March 31, 2005. As the parties did not submit any evidence or written argument to NASD on or before March 31, 2005, on April 19, 2005, the Arbitrator issued an Order requesting that Claimant provide certain specific documentation in support of its claims on or before May 19, 2005. NASD received the requested documentation on April 22, 2005 and forwarded it to the Arbitrator on April 26, 2005.

Upon review of the file and the representations made on behalf of Claimant, the undersigned Arbitrator determined that Respondent Michael J. Febert was properly served with the Statement of Claim and received due notice of the two pre-hearing conferences in this matter as well as the Arbitrator's two Orders requesting additional documentation.

### AWARD

After considering the pleadings, the procedural history of this matter, and Claimant's April 22, 2005 submission, the Arbitrator decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent is liable to and shall pay Claimant First Montauk Securities Corp. the sum of \$19,552.68 in compensatory damages.
- 2) Respondent is liable to and shall pay Claimant First Montauk Securities Corp. the sum of \$750.00 as reimbursement for filing fees and \$5,865.80 in collection fees.
- 3) All other relief requested and not expressly granted is denied.

**FEES**

Pursuant to the Code, the following fees are assessed:

**Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 750.00
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**Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm First Montauk Securities Corp. is a party, and the following fees are assessed:

Member Surcharge	= \$ 425.00
<b>Total Member Fees</b>	<b>= \$ 425.00</b>

**Forum Fees and Assessments**

The Arbitrator assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Arbitrator. The following fees are assessed:

Two (2) pre-hearing conference sessions with a single arbitrator @ \$450.00/session	= \$ 900.00
Pre-hearing conferences: February 1, 2005 1 session	
March 2, 2005 1 session	
Decision on the papers:	= \$ 300.00
<b>Total Forum Fees</b>	<b>= \$1,200.00</b>

The Arbitrator assessed \$1,200.00 in forum fees to Respondent Michael J. Febert.

**Fee Summary**

1. Claimant First Montauk Securities Corp. is charged with the following fees and costs:

Initial Filing Fee	= \$ 750.00
<u>Member Fees</u>	= \$ 425.00
Total Fees	= \$ 1,175.00
<u>Less payments</u>	= \$(1,625.00)
<b>Refund Due First Montauk Securities Corp.</b>	<b>= \$ (450.00)</b>

2. Respondent Michael J. Febert is charged with the following fees and costs:

Forum Fees	= \$1,200.00
<u>Less payments</u>	= \$ (0.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$1,200.00</b>

All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

NASD Dispute Resolution  
Arbitration No. 04-07612  
Award Page 5 of 5

ARBITRATOR

*Jan Aalbrektse Slinn, Esq.*

- *Non- Public Arbitrator*

Arbitrator's Signature

*Jan A. Slinn*  
Jan Aalbrektse Slinn, Esq.  
Non-Public Arbitrator

*4/27/05*  
Signature Date

*4/28/05*  
Date of Service