

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Strand, Atkinson, Williams & York, Inc., Claimant v. Linda S. Green, Respondent

Linda S. Green, Counter-Claimant v. Strand, Atkinson, Williams & York, Inc., Counter-Respondent

Case Number: 04-08852

Hearing Site: Portland, Oregon

Nature of the Dispute: Member v. Associated Person
 Associated Person v. Member

REPRESENTATION OF PARTIES

For Claimant/Counter-Respondent

Strand, Atkinson, Williams & York, Inc.

("Strand, Atkinson, Williams & York, Inc.):

Thomas C. Sand, Esq.

Erin Truax, Esq.

Miller Nash, LLP

Portland, Oregon

For Respondent/Counter-Claimant Linda S. Green

("Linda S. Green"):

Linda L. Marshall, Esq.

Attorney at Law

Lake Oswego, Oregon

CASE INFORMATION

Statement of Claim filed: December 27, 2004

Strand, Atkinson, Williams & York, Inc.'s Uniform Submission Agreement signed: December 20, 2004

Statement of Answer and Counterclaim filed by Linda S. Green: February 18, 2005

Amendment to Counterclaim filed by Linda S. Green: January 6, 2006

Linda S. Green's Uniform Submission Agreement signed: February 17, 2005

Reply to Counterclaim filed by Strand, Atkinson, Williams & York, Inc.: March 4, 2005

CASE SUMMARY

Strand, Atkinson, Williams & York, Inc. alleged breach of contract involving a Broker Agreement and a promissory note.

Linda S. Green denied the allegations of wrongdoing set forth in Strand, Atkinson, Williams & York, Inc.'s Statement of Claim.

In the Counterclaim, Linda S. Green alleged gender discrimination in violation of ORS 659.030(1)(b), breach of duty of good faith and fair dealing, and breach of contract. In the amendment to the Counterclaim, Linda S. Green added allegations of unpaid wages and penalties.

In the Reply to Counterclaim, Strand, Atkinson, Williams & York, Inc. denied the allegations of wrongdoing set forth in Linda S. Green's Counterclaim.

RELIEF REQUESTED

Strand, Atkinson, Williams & York, Inc. requested \$70,800.00 in compensatory damages, interest at the rate of 6% per annum from December 27, 2003 until paid, and costs, including attorney's fees and disbursements for this action. Strand, Atkinson, Williams & York, Inc. also requested an injunction enjoining Linda S. Green from contacting Strand, Atkinson, Williams & York, Inc. clients for one year or until Linda S. Green pays the balance due on the promissory note.

Linda S. Green requested denial of the relief sought by Strand, Atkinson, Williams & York, Inc., \$960,558.00 in economic damages, cancellation of the promissory note, declaration that the Broker Agreement is terminated and of no further effect, prejudgment interest, and costs, including attorney's fees and disbursements.

OTHER ISSUES CONSIDERED AND DECIDED

On January 6, 2006, Linda S. Green filed an amendment to her Counterclaim adding three new claims under Oregon law relating to unpaid wages and penalties. The Panel approved the filing of Linda S. Green's amendment to the Counterclaim pursuant to NASD Code of Arbitration Procedure Rule 10328(c).

At the evidentiary hearing, Strand, Atkinson, Williams & York, Inc. withdrew their request for an injunction. Also at the evidentiary hearing, Linda S. Green withdrew her wage claims.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Strand, Atkinson, Williams & York, Inc.'s claims are denied in their entirety and dismissed with prejudice. The Arbitration Panel finds that the contract of employment between Strand, Atkinson, Williams & York, Inc. and Linda S. Green entered into on December 27, 2000 was made under a mutually mistaken understanding by each party as to the other party's ability to perform its expectations under the contract. The attendant promissory note dated December 27, 2000 was an integral part of that transaction and as such it is tainted by the same failure and becomes equitably unenforceable.
- 2) Linda S. Green's Counterclaim is also denied in its entirety and dismissed with prejudice. The Arbitration Panel finds that Linda S. Green did not sustain her burden of proof to establish a breach of the implied contractual duty of good faith and fair dealing. The Arbitration Panel finds that Linda S. Green also did not sustain her burden of proof to establish gender discrimination.
- 3) Any other claims and counterclaims, not expressly addressed herein, are hereby dismissed with prejudice.
- 4) The parties shall bear their respective costs, including attorney's fees.
- 5) 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	= \$ 1,000.00
Linda S. Green's Counterclaim filing fee	= \$ 375.00

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 Strand, Atkinson, Williams & York, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,100.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 4,000.00</u>
Total Member Fees	= \$ 5,850.00

The member firm First Montauk Securities employed Linda S. Green at the time of the events giving rise to this dispute and the following fees are assessed:

Member Surcharge	= \$ 1,100.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 4,000.00</u>
Total Member Fees	= \$ 5,850.00

Forum Fees and Assessments

The Panel 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 Panel. The following fees are assessed:

1 Pre-hearing conference session with the Panel @ \$1,200.00/session	= \$ 1,200.00
Pre-hearing conference: May 18, 2005 1 session	
6 Hearing sessions @ \$1,200.00/session	= \$ 7,200.00
Hearings: January 9, 2006 2 sessions	
January 10, 2006 2 sessions	
January 11, 2006 2 sessions	

Total Forum Fees	= \$ 8,400.00
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1. The Panel assessed \$4,200.00 of the forum fees to Strand, Atkinson, Williams & York, Inc.
2. The Panel assessed \$4,200.00 of the forum fees to Linda S. Green.

Fee Summary

1. Strand, Atkinson, Williams & York, Inc. is charged with the following fees and costs:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 5,850.00
Forum Fees	= \$ 4,200.00
Total Fees	= \$11,050.00
Less payments	= \$(7,600.00)
Balance Due NASD Dispute Resolution	= \$ 3,450.00
2. Linda S. Green is charged with the following fees and costs:

Counterclaim Filing Fee	= \$ 375.00
Forum Fees	= \$ 4,200.00
Total Fees	= \$ 4,575.00
Less payments	= \$(2,450.00)
Balance Due NASD Dispute Resolution	= \$ 2,125.00
3. First Montauk Securities is charged with the following fees and costs:

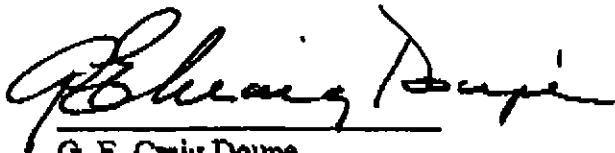
Member Fees	= \$ 5,850.00
Less payments	= \$(5,850.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

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.

ARBITRATION PANEL

G. E. Craig Doupe	-	Public Arbitrator, Presiding Chair
William J. Bender	-	Public Arbitrator
Paul D. Hansen	-	Public Arbitrator

Concurring Arbitrators' Signatures



G. E. Craig Doupe
Chair, Public Arbitrator

1/18/06

Signature Date

William J. Bender
Public Arbitrator

Signature Date

Paul D. Hansen
Public Arbitrator

Signature Date

1/19/06
Date of Service


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Public Arbitrator

1-18-06

Signature Date

Paul D. Hansen
Public Arbitrator

Signature Date

1/19/06

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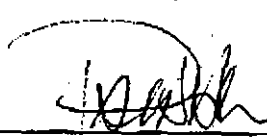
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Signature Date

William J. Bender

Public Arbitrator

Signature Date



Paul D. Hansen

Public Arbitrator

1/19/06
Signature Date

1/19/06
Date of Service