

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Evan Timothy King

and

05-00382
Chicago, Illinois

Name of Respondents

First Midstate Incorporated
Paul D. Brown

Nature of the Dispute: Associated Person vs. Member and Associated Person.

REPRESENTATION OF PARTIES

Evan Timothy King ("Claimant") was represented by Steven Gomberg, Esq. and Beau T. Greiman, Esq., Levenfeld Pearlstein, LLC, Chicago, Illinois.

First Midstate Incorporated and Paul D. Brown ("Respondents") were represented by Miriam G. Bahcall, Esq. and Evan T. Knott, Esq., Morgan Lewis & Bockius, LLP, Chicago, Illinois.

CASE INFORMATION

The Amended Statement of Claim was filed on or about February 11, 2005. Answer to Respondents Counterclaim was filed on or about October 14, 2005. Submission Agreement of Claimant Evan Timothy King was not signed.

Joint Answer to Amended Statement of Claim was filed by Respondents First Midstate Incorporated and Paul D. Brown on or about April 27, 2005. Respondents' Counterclaim was filed on or about July 19, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: wrongful termination, breach of employment agreement, fraud, defamation, tortious interference, and violation of Wage Payment and Collection Act. Claimant specifically alleged in the Amended Statement of Claim:

Over the course of his employment, King regularly made minor detours on his way to and from work to attend to personal matters such as banking, picking up his children from school, shopping, and dining. King reasonably believed that these minor personal detours were acceptable as long as they were made during the course of his normal commute, especially giving the considerable length of his commute. Throughout his employment by First Midstate, King submitted daily mileage reports that openly disclosed his minor personal detours. Indeed, the commuting miles submitted by King varied each day. Prior to the day he was terminated, Brown never questioned King's daily mileage reports or instructed him to change his commuting habits.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated in their Answer to Amended Statement of Claim:

It has long been First Midstate's policy to terminate the employment of any employee caught falsifying his or her expense reports. As required by NASD rules, First Midstate reported to the NASD on its Form U5 that it had terminated King because of his falsification of his expense report. Since the date of King's termination, First Midstate has had no contact with any potential employers considering King for employment.

RELIEF REQUESTED

Claimant requested an award of unspecified damages, plus punitive damages, attorney's fees, interest, costs and expenses.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded unspecified damages, plus enforcement of the terms of Claimant's Confidentiality Agreement, costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

Respondents First Midstate Incorporated and Paul D. Brown did not file with the NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing are bound by the determination of the arbitration panel on all issues submitted.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, if any, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents First Midstate Incorporated and Paul D. Brown are jointly liable for and shall pay to Claimant Evan Timothy King the sum of \$18,888.00 (**eighteen thousand eight hundred eighty-eight dollars and no cents**) as compensatory damages.
2. Respondents First Midstate Incorporated and Paul D. Brown are jointly liable for and shall pay to Claimant Evan Timothy King the sum of \$37,776.00 (**thirty-seven thousand seven hundred seventy-six dollars and no cents**) as punitive damages.
3. The non-competition/confidentiality agreement between the parties is declared void and unenforceable.
4. Respondents shall forthwith withdraw the Form U5 previously filed with regard to Claimant and simultaneously file a new Form U5, which recites that the sole reason for Claimant's termination of employment with Respondent First Midstate Incorporated was a "disagreement regarding compensation and expense reimbursement".
 - a. The Panel recommends the expungement of the language stating the reason for termination in the previously filed Form U5 based on the defamatory nature of the information, and the expungement of all reference to the above captioned arbitration from Respondent Evan Timothy King's registration records maintained by the NASD Central Registration Depository ("CRD") and that a new Form U5 be filed as stated above.
 - b. The expungement relief is granted based on the defamatory nature of the information in the CRD system.
5. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
6. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees, not specifically awarded or otherwise provided for above.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$250.00
Counterclaim filing fee	= \$500.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is First Midstate Incorporated.

Member surcharge	\$	1,500.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	2,200.00
Total Member Fees	\$	4,450.00

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted or each decision rendered on a discovery-related motion on the papers.. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

1	Pre-hearing session(s) with Panel	@	1,000.00	\$	1,000.00
	June 13, 2005	1	session		
11	Hearing sessions	@	1,000.00	\$	11,000.00
	November 2, 2005	2	sessions		
	December 19, 2005	2	sessions		
	February 22, 2006	2	sessions		
	February 23, 2006	2	sessions		
	February 24, 2006	2	sessions		
	March 3, 2006	1	sessions		
	Total Forum Fees			\$	12,000.00

The Arbitration Panel has assessed \$12,000.00 of the forum fees jointly and severally to First Midstate Incorporated and Paul D. Brown.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

Respondents requested copies of tapes = \$60.00

Fee Summary

Claimant, Evan Timothy King, is liable for:

Initial Filing Fee	= \$	250.00
Total Fees	= \$	250.00
<u>Less payments</u>	= \$	-1,250.00
Balance to be refunded by NASD Dispute Resolution	= \$	-1,000.00

Respondent, First Midstate Incorporated, is liable for:

Member Fees	= \$	4,450.00
Total Fees	= \$	4,450.00
<u>Less payments</u>	= \$	-5,950.00
Balance applied to fees below	= \$	-1,500.00

Respondents, First Midstate Incorporated and Paul D. Brown are jointly and severally liable for:

Counterclaim Filing Fee	= \$	500.00
Administrative Costs	= \$	60.00
<u>Forum Fees</u>	= \$	12,000.00
Total Fees	= \$	12,560.00
<u>Less payments</u>	= \$	-1,500.00
Balance Due NASD Dispute Resolution	= \$	11,060.00

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Terry F. Peppard, Esq. - Public Arbitrator, Presiding Chair
Kenneth J. Good, Esq. - Public Arbitrator
Stephen K. Dome - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Terry F. Peppard
Terry F. Peppard, Esq.
Public Arbitrator, Presiding Chair

03/20/06
Signature Date

/s/ Kenneth J. Good
Kenneth J. Good, Esq.
Public Arbitrator

03/21/06
Signature Date

/s/ Stephen K. Dome
Stephen K. Dome
Non-Public Arbitrator

03/17/06
Signature Date

3/21/06
Date of Service (For NASD office use only)

03/20/2006 17:00

03/20/06 MON 15:46 FAX

TERRY F PEPPARD
NASD REGULATION

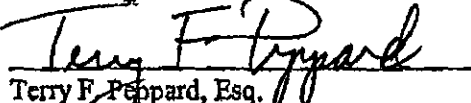
PAGE 02/02
4007

NASD Dispute Resolution
Arbitration No. 05-00382
Award Page 6 of 6

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