

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Brian Wing Ong, Claimant v. Equitrust Marketing Services, LLC, Respondent

Case Number: 05-01110

Hearing Site: Phoenix, Arizona

Nature of the Dispute: Associated Person v. Member

REPRESENTATION OF PARTIES

For Claimant:

Michael Salcido, Esq.
Renaud Cook Drury Mesaros, PA
Phoenix, Arizona

For Respondent:

James V. Garvey, Esq.
Vedder, Price, Kaufman &
Kammholz, P.C
Chicago, Illinois

CASE INFORMATION

Statement of Claim filed: February 24, 2005

Amended Statement of Claim filed: November 3, 2005

Claimant's Uniform Submission Agreement signed: February 24, 2005

Statement of Answer filed by Respondent: May 2, 2005

Respondent's Uniform Submission Agreement signed: May 6, 2005

CASE SUMMARY

In his initial Statement of Claim, Claimant alleged that Respondent placed a false, negative item as the reason for termination on Claimant's Form U-5, defamation, and violation of the covenants of good faith and fair dealing. Claimant alleged further, that as a result of Respondent's conduct, Claimant has been unable to sell securities in Arizona. In his amended Statement of Claim, Claimant alleged negligence, gross negligence in filling out Claimant's Form U-5, negligent or intentional infliction of emotional distress, intentional or reckless misstatements, false filing with regulatory agency, fraud, interference or tortious interference with contract or business relationship, breach of fiduciary duty, retaliation, and blackballing.

Respondent denied the allegations of wrongdoing set forth in Claimant's Statement of Claim.

RELIEF REQUESTED

Claimant requested an Order requiring Respondent to remove the improper, erroneous, negative item from Claimant's Form U-5, compensatory damages in an unspecified amount, unspecified punitive damages, and costs, including attorney's fees.

Respondent requested dismissal of Claimant's Statement of Claim in its entirety, and costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

On or about October 4, 2005, Respondent moved the Panel for an Order Dismissing the Statement of Claim on the ground that it is time barred under Arizona law, or, in the alternative, on the ground that Respondent's statements on Claimant's Form U-5 are absolutely privileged under Arizona law. On or about January 4, 2006, a telephonic pre-hearing conference was held, attended by the Parties and the Panel. After due deliberation in an executive session, the Panel denied the motion.

On or about November 3, 2005, Claimant moved the Panel for an Order allowing him to amend his Statement of Claim. On or about January 4, 2006, a telephonic pre-hearing conference was held, attended by the Parties and the Panel. After due deliberation in an executive session, the Panel granted the motion.

On or about April 6, 2006, Respondent moved the Panel for an Order barring Claimant from presenting documentary evidence at the hearing based on Claimant's non-compliance with the pre-hearing exchange requirement of the Code of Arbitration Procedure. On April 18, 2006, a telephonic pre-hearing conference was held, attended by the Parties and the Panel. After due deliberation in an executive session, the Panel denied the motion.

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) Claimant's claims are denied in their entirety.
- 2) Claimant's request for expungement is denied.
- 3) The parties shall bear their respective costs, including attorney's fees.
- 4) 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	= \$ 250.00
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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 Equitrust Marketing Services, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 2,200.00</u>
Total Member Fees	= \$ 4,450.00

Adjournment Fees

The following adjournment fees are assessed:

January 24-26, 2006, adjournment requested by both parties	= \$ 1,000.00
The Panel assessed \$500.00 of the adjournment fee to the Claimant.	
The Panel assessed \$500.00 of the adjournment fee to the Respondent.	

Forum Fees and Assessments

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

(2) Pre-hearing conference sessions with a single arbitrator @ \$ 450.00/session			= \$ 900.00
Pre-hearing conferences:	March 2, 2006	1 session	
	March 9, 2006	1 session	
(3) Pre-hearing conference sessions with the Panel @ \$1,000.00/session			= \$ 3,000.00
Pre-hearing conferences:	June 28, 2005	1 session	
	January 4, 2006	1 session	
	April 18, 2006	1 session	
(4) Hearing sessions @ \$1,000.00/session			= \$ 4,000.00
Hearings:	April 25, 2006	2 sessions	
	April 26, 2006	2 sessions	
Total Forum Fees			= \$ 7,900.00

1. The Panel assessed \$3,950.00 of the forum fees to Claimant.
2. The Panel assessed \$3,950.00 of the forum fees to Respondent.

Fee Summary

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 250.00
Adjournment Fee	= \$ 500.00
Forum Fees	= \$ 3,950.00
Total Fees	= \$ 4,700.00
<u>Less payments</u>	= \$(1,250.00)
Balance Due NASD Dispute Resolution	= \$ 3,450.00

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

Member Fees	= \$ 4,450.00
Adjournment Fee	= \$ 500.00
Forum Fees	= \$ 3,950.00
Total Fees	= \$ 8,900.00
<u>Less payments</u>	= \$(4,950.00)
Balance Due NASD Dispute Resolution	= \$ 3,950.00

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

Amy L. Lieberman, Esq.	-	Public Arbitrator, Presiding Chair
I. Douglas Dunipace, Esq.	-	Public Arbitrator
Barbara Mark Dreyfuss	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Amy L. Lieberman, Esq.
Chair, Public Arbitrator

5/2/06
Signature Date

I. Douglas Dunipace, Esq.
Public Arbitrator

Signature Date

Barbara Mark Dreyfuss
Non-Public Arbitrator

Signature Date

5/4/06
Date of Service

ARBITRATION PANEL

Amy L. Lieberman, Esq.	-	Public Arbitrator, Presiding Chair
I. Douglas Dunipace, Esq.	-	Public Arbitrator
Barbara Mark Dreyfuss	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Amy L. Lieberman, Esq.
Chair, Public Arbitrator

Signature Date




I. Douglas Dunipace, Esq.
Public Arbitrator



Signature Date

Barbara Mark Dreyfuss
Non-Public Arbitrator

Signature Date



Date of Service