

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Lawrence Marcus, Claimant v. Trautman Wasserman & Company, Inc., TW Holding Company, Inc., TW Private Equity Corporation, Greg Trautman, and Samuel Wasserman, Respondents

Case Number: 05-02992

Hearing Site: San Francisco, California

Nature of the Dispute: Associated Person v. Member, Non-Members, and Associated Persons

REPRESENTATION OF PARTIES

For Claimant:

Cliff Palefsky, Esq.
Keith Ehrman, Esq.
McGuinn, Hillsman & Palefsky
San Francisco, California

For Respondents

Trautman Wasserman & Company, Inc., ("TW")
TW Holding Company, Inc., ("TWHC")
TW Private Equity Corporation, (TWPEC")
Greg Trautman, ("Trautman") and
Samuel Wasserman ("Wasserman"):

Julie L. Taylor, Esq.
John Cox, Esq.
Keesal, Young & Logan
San Francisco, California

CASE INFORMATION

Statement of Claim filed: June 8, 2005

Claimant's Uniform Submission Agreement signed: June 16, 2005

Statement of Answer filed by Respondent TW: August 25, 2005

Respondent TW's Uniform Submission Agreement signed: September 1, 2005

Amended Statement of Claim accepted by Panel: January 31, 2006

Statement of Answer to Amended Statement of Claim filed by Respondent TW:
February 10, 2006

Joint Statement of Answer to Amended Statement of Claim filed by Respondents
TWHC, TWPEC, Trautman, and Wasserman: March 17, 2006

CASE SUMMARY

In his Initial Statement of Claim, Claimant alleged breach of contract and violations of California Labor Code against Respondent TW, Claimant's former employer.

In his Amended Statement of Claim, Claimant, added Respondents TWHC, TWPEC, Trautman, and Wasserman. Claimant set forth the "alter ego/disregard of corporate entity" theory of liability and added allegations of fraud and conversion.

Respondents denied the allegations of wrongdoing set forth in Claimant's Statements of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested unspecified compensatory damages, punitive damages, interest, and costs, including attorney's fees.

Respondents requested dismissal of Claimant's Statements of Claim in their entirety and attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Trautman and Wasserman did not file with NASD Dispute Resolution a properly executed submission agreement but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure and having answered the claim, appeared and testified at the hearing are bound by the determination of the Panel on all issues submitted.

Respondents TWHC and TWPEC did not file with NASD Dispute Resolution a properly executed submission agreement but having answered the claim, appeared and testified at the hearing are bound by the determination of the Panel on all issues submitted.

On December 8, 2005, Claimant filed a Motion for Leave to file an Amended Statement of Claim pursuant to the NASD Code of Arbitration Procedure Rule 10328. On January 10, 2006, Respondent TW filed an Opposition. On January 31, 2006, the Panel granted Claimant's Motion for Leave to file an Amended Statement of Claim. The Amended Statement of Claim was attached as an exhibit to the motion.

At the hearing, Respondents TWHC, TWPEC, Trautman, and Wasserman made a motion to dismiss Claimant's "alter ego/disregard of corporate entity" claim. Claimant opposed. After due deliberation, 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, evidence presented at the hearing, and post hearing submissions, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent TW is liable to and shall pay Claimant the sum of \$100,000.00 in compensatory damages for breach of contract.
- 2) Claimant's other claims against TW and all claims against Respondents TWHC, TWPEC, Trautman, and Wasserman are denied in their entirety.
- 3) Respondent TW is liable to and shall pay Claimant \$14,821.00 in accrued interest and, in addition, simple interest at the rate of 10% per annum on \$114,821.00 from August 24, 2006, until the date compensatory damages and accrued interest are paid in full to Claimant.

- 4) Respondent TW is liable to and shall pay Claimant the sum of \$65,019.25 in attorney's fees, pursuant to California Labor Code Section 218.5. In addition, Respondent TW is liable to and shall pay Claimant simple interest at the rate of 10% per annum on \$65,019.25 from August 24, 2006, until the date attorney's fees are paid in full to Claimant.
- 5) Except as noted above, the parties shall bear their respective costs.
- 6) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure, 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 Trautman Wasserman & Company, Inc. is a party and the following fees are assessed:

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

Adjournment Fees

The following adjournment fees are assessed:

Adjournment of the April 4-7, 2006 hearings requested by Respondents	= \$ 1,000.00
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The Panel assessed the adjournment fee to Respondent TW.

Forum Fees and Assessments

The Panel assessed forum fees for each session conducted or each decision rendered on a discovery-related motion decided 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:

(3) Pre-hearing conference sessions with a single arbitrator
@ \$450.00/session = \$ 1,350.00

Pre-hearing conferences: March 7, 2006 1 session
July 17, 2006 1 session
July 21, 2006 1 session

(2) Pre-hearing conference sessions with the Panel @ \$1,000.00/session = \$ 2,000.00

Pre-hearing conferences: November 7, 2005 1 session
July 21, 2006 1 session

(6) Hearing sessions @ \$1,000.00/session = \$ 6,000.00

Hearings: August 9, 2006 2 sessions
August 23, 2006 2 sessions
August 24, 2006 2 sessions

Total Forum Fees = \$ 9,350.00

1. The Panel assessed the entire balance of the forum fees, in the amount of \$7,900.00, to TW pursuant to *Armendariz v. Foundation Health Psychcare Services, Inc.*, 24 Cal. 4th 83 (2000); *Little v. Auto Stigler*, 20 Cal 4th 1064; *cert denied*, 124 S. Ct. 83 (2003); and, *McManus v. CIBC World Markets Corp.*, 109 Cal. App. 4th 76 (2003).
2. The Panel waived \$1,450.00 of the forum fees for the conference calls held due to the Chair's scheduling conflict.

Fee Summary

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

Initial Filing Fee	= \$ 200.00
<u>Less payments</u>	<u>= \$(1,425.00)</u>
Balance already refunded	= \$(1,225.00)

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

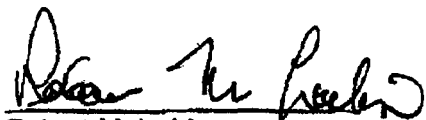
Balance due for Claimant's Filing Fee	= \$ 50.00
Member Fees	= \$ 4,450.00
Adjournment Fee	= \$ 1,000.00
<u>Forum Fees</u>	<u>= \$ 7,900.00</u>
Total Fees	= \$13,400.00
<u>Less payments</u>	<u>= \$(4,450.00)</u>
Balance Due NASD Dispute Resolution	= \$ 8,950.00

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

Robert M. Lubin	-	Public Arbitrator, Presiding Chair
Kathryn J. Toronto	-	Public Arbitrator
Juleanne A. Thiebaut	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Robert M. Lubin
Chair, Public Arbitrator

9/30/06

Signature Date

Kathryn J. Toronto
Public Arbitrator

Signature Date

Juleanne A. Thiebaut
Non-Public Arbitrator

Signature Date

10/2/06
Date of Service

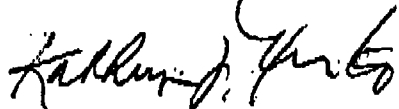
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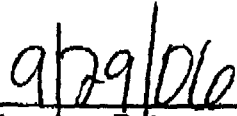
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