

**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Stuart Fromm (Claimant) vs. ING Funds Distributor, LLC, Lauren Bensinger, Robert J. Boulware, Bayard Closser, John Heilner and Richard Jiminez (Respondents)

Case Number: 05-03426

Hearing Site: New York, New York

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

REPRESENTATION OF PARTIES

Claimant Stuart Fromm hereinafter referred to as "Claimant": Kenneth A. Goldberg, Esq., Goldberg & Fliegel, LLP, New York, NY.

Respondents ING Funds Distributor, LLC ("ING Funds"), Lauren Bensinger ("Bensinger"), Robert J. Boulware ("Boulware"), Bayard Closser ("Closser"), John Heilner ("Heilner") and Richard Jiminez ("Jiminez") hereinafter collectively referred to as "Respondents": Emily J. Burkhardt, Esq., Hunton & Williams, Atlanta, GA.

CASE INFORMATION

Statement of Claim filed on or about: July 5, 2005.

Claimant signed the Uniform Submission Agreement: July 5, 2005.

Joint Statement of Answer filed by Respondents on or about: August 31, 2005.

ING Funds did not submit a Uniform Submission Agreement.

Bensinger did not submit a Uniform Submission Agreement.

Boulware did not submit a Uniform submission Agreement.

Closser did not submit a Uniform Submission Agreement.

Heilner did not submit a Uniform Submission Agreement.

Jiminez did not submit a Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: violation of The Sarbanes-Oxley Act of 2002, defamation, libel and slander, failure to pay wages in violation of the New York State Labor law, breach of contract, unjust enrichment, quantum meruit and conversion.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested:

- A) Compensatory damages in excess of \$10,000,000.00.
- B) On Count One - Reinstatement of employment with Respondents with full seniority status, promotions, salary increments and increases, bonuses and benefits, to the same extent that Claimant would have received but for Respondents' unlawful conduct.
- C) On Count One - Award damages to compensate Claimant for Respondents' unlawful conduct, including without limitation economic damages, wages, back pay, front pay, commissions, fees, earnings, salary, stock, stock options, securities, equity, bonuses, benefits, pension and retirement earnings, and interest lost and all other statutory damages provided by Sarbanes-Oxley.
- D) On Count Two - Award Claimant an Order and/or Injunction requiring Respondents to amend Claimant's Form U-5 and directing the NASD to do so, to delete any and all defamatory language from that Form U-5 that Claimant was discharged for "failure to meet territory requirements".
- E) On Count Two - Award damages to compensate Claimant for Respondents unlawful defamation.
- F) On Count Three - Award Claimant the amount of unpaid wages due and owing in accordance with the labor Law, see, e.g., N.Y. Lab. L. § 191, 198.
- G) On Count Three - Award liquidated damages in an amount equal to twenty-five percent (25%) of the award for unpaid wages, in accordance with the Labor Law, see, e.g., N.Y. Lab. L. § § 191, 198 (1-a).
- H) On Count Three - Award costs of this arbitration, including without limitation all arbitration fees, and disbursements, together with attorneys' fees, in accordance with the Labor Law, see, e.g., N.Y. Lab. L § 191, 198 (1-a).
- I) On Count Three - Award the amount of \$50.00 in accordance with the Labor Law, see, e.g., N.Y. Lab. L. § 191, 198 (1).
- J) On Count Four - Award damages to compensate for breach of contract.
- K) On Count Five - Award damages to compensate for unjust enrichment.
- L) On Count Six - Award damages to compensate for quantum meruit.
- M) On Count Seven - Award damages to compensate for unlawful conversion.
- N) On Counts One, Two, Four, Five, Six and Seven – Award damages to compensate for additional damages arising out of and/or flowing from Respondents' unlawful conduct.
- O) On Counts One, Two and Seven - Award damages to compensate for among other items, injury, impairment and damage to Claimant's good name and reputation, emotional distress, mental anguish, emotional pain, suffering, inconvenience, loss of enjoyment of life, lasting embarrassment and humiliation, and other pecuniary and non-pecuniary losses.
- P) On Counts One, Two, Four, Five, Six and Seven - Award punitive and exemplary damages.
- Q) On Counts One, Two, Four, Five, Six and Seven - Award costs of this arbitration, including without limitation all arbitration fees, and disbursements, together with attorneys' fees.
- R) On Counts One, Two, Three, Four, Five, Six and Seven - Award lost interest at a rate of 9%.
- S) Grant such other and further relief as may be necessary and proper.

Respondents requested dismissal of the Statement of Claim with prejudice, reasonable costs and/or reasonable attorneys' fees incurred in defending this action, and such other and further relief as is deemed appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents ING Funds Distributor, LLC, Lauren Bensinger, Robert J. Boulware, Bayard Closser, John Heilner and Richard Jimenez did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

At the hearing Respondents made a Motion to Dismiss all claims asserted by Claimant. After due deliberation, the Panel granted the Motion to Dismiss against Lauren Bensinger, John Heilner, Bayard Closser, Robert Boulware and Richard Jimenez with prejudice

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.

AWARD

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

1. Respondents ING Funds Distributor, LLC is liable for and shall pay to Claimant compensatory damages in the amount of \$42,500.00.
2. Any and all relief not specifically addressed herein, including punitive damages, is denied.

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	= \$600.00
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Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, ING Funds Distributor, LLC is a party.

Member surcharge	= \$3,350.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,500.00

Forum Fees and Assessments

The Panel has assessed forum fees for each 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 arbitrator(s) that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00/session = \$ 450.00
Pre-hearing conference: February 15, 2006 1 session

Two (2) Pre-hearing sessions with Panel @ \$1,200.00/session = \$ 2,400.00
Pre-hearing conferences: November 15, 2005 1 session
June 21, 2006 1 session

Nineteen (19) Hearing sessions @ \$1,200.00/session = \$ 22,800.00
Hearing Dates: September 18, 2006 2 sessions
September 19, 2006 2 sessions
September 20, 2006 2 sessions
September 21, 2006 2 sessions
September 22, 2006 1 session
October 30, 2006 2 sessions
October 31, 2006 2 sessions
November 1, 2006 2 sessions
November 2, 2006 2 sessions
November 21, 2006 2 sessions

Total Forum Fees = \$25,650.00

1. The Panel has assessed \$3,664.28 of the forum fees to Claimant.
2. The Panel has assessed \$3,664.28 of the forum fees to ING Funds.
3. The Panel has assessed \$3,664.28 of the forum fees to Bensinger.
4. The Panel has assessed \$3,664.28 of the forum fees to Boulware.
5. The Panel has assessed \$3,664.28 of the forum fees to Closser.
6. The Panel has assessed \$3,664.28 of the forum fees to Heilner.
7. The Panel has assessed \$3,664.28 of the forum fees to Jimenez.

FEE SUMMARY

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 3,664.28
Total Fees	= \$ 4,264.28
Less payments	= \$ 1,800.00
Balance Due NASD Dispute Resolution	= \$ 2,464.28

2. Respondent ING Funds is solely liable for:

Member Fees	= \$ 9,600.00
Forum Fees	= \$ 3,664.28
Total Fees	= \$ 13,264.28

<u>Less payments</u>	= \$ 9,600.00
Balance Due NASD Dispute Resolution	= \$ 3,664.28

3. Respondent Bensinger is solely liable for:

<u>Forum Fees</u>	= \$ 3,664.28
<u>Total Fees</u>	= \$ 3,664.28
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 3,664.28

4. Respondent Boulware is solely liable for:

<u>Forum Fee</u>	= \$ 3,664.28
<u>Total Fees</u>	= \$ 3,664.28
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 3,664.28

5. Respondent Closser is solely liable for:

<u>Forum Fees</u>	= \$ 3,664.28
<u>Total Fees</u>	= \$ 3,664.28
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 3,664.28

6. Respondent Heilner is solely liable for:

<u>Forum Fees</u>	= \$ 3,664.28
<u>Total Fees</u>	= \$ 3,664.28
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 3,664.28

7. Respondent Jimenez is solely liable for:

<u>Forum Fees</u>	= \$ 3,664.28
<u>Total Fees</u>	= \$ 3,664.28
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 3,664.28

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

ARBITRATION PANEL

Robert Czik	-	Public Arbitrator, Presiding Chairperson
Alexander Tolor, Ph.D	-	Public Arbitrator
Robert A. Vaccaro	-	Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Concurring Arbitrators' Signatures

Robert Czik
Robert Czik
Public Arbitrator, Presiding Chairperson

12/4/06
Signature Date

Alexander Tolor, Ph.D
Alexander Tolor, Ph.D
Public Arbitrator

Signature Date

Robert A. Vaccaro
Robert A. Vaccaro
Non-Public Arbitrator

Signature Date

December 5, 2006

Date of Service (For NASD Dispute Resolution use only)

Robert Czik	-	Public Arbitrator, Presiding Chairperson
Alexander Tolor, Ph.D	-	Public Arbitrator
Robert A. Vaccaro	-	Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Concurring Arbitrators' Signatures

Robert Czik
Public Arbitrator, Presiding Chairperson

Signature Date

Alexander Tolor, Ph.D.

Alexander Tolor, Ph.D
Public Arbitrator

December 1, 2006

Signature Date

Robert A. Vaccaro
Non-Public Arbitrator

Signature Date

December 5, 2006

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Robert Czik	-	Public Arbitrator, Presiding Chairperson
Alexander Tolor, Ph.D	-	Public Arbitrator
Robert A. Vaccaro	-	Non-Public Arbitrator

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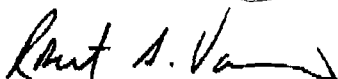
Concurring Arbitrators' Signatures

Robert Czik
Public Arbitrator, Presiding Chairperson

Signature Date

Alexander Tolor, Ph.D
Public Arbitrator

Signature Date



Robert A. Vaccaro
Non-Public Arbitrator

Signature Date

December 5, 2006

Date of Service (For NASD Dispute Resolution use only)