

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

M.L. Stern & Co., LLC., Claimant v. Jay M. Kim, Respondent

Case Number: 05-03538

Hearing Site: Las Vegas, Nevada

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Nature of the Dispute: Member v. Associated Person

**REPRESENTATION OF PARTIES**

For Claimant:

James R. Ballard, Esq.  
Schwartz Semerdjian Haile  
Ballard & Cauley, LLP  
San Diego, California

For Respondent:

Jay M. Kim  
Pro Se  
Las Vegas, Nevada

**CASE INFORMATION**

Statement of Claim filed: June 22, 2005

Claimant M.L. Stern & Co., LLC.'s Uniform Submission Agreement signed: June 27, 2005

Statement of Answer filed by Respondent Jay M. Kim: August 5, 2005

Respondent Jay M. Kim's Uniform Submission Agreement signed: August 5, 2005

**CASE SUMMARY**

Claimant alleged breach of contract in connection with Respondent's alleged breach of his employment agreement with Claimant.

Unless specifically admitted in its Answer, Respondent denied the allegations of wrongdoing set forth in Claimant's Statement of Claim.

**RELIEF REQUESTED**

Claimant requested \$25,000.00 in compensatory damages, pre-judgment interest, and costs, including attorney's fees.

Respondent requested dismissal of Claimant's Statement of Claim in its entirety.

**OTHER ISSUES CONSIDERED AND DECIDED**

At the initial pre-hearing conference in this matter, the arbitrator agreed to decide this case based on the pleadings that had been filed and briefs that would be submitted (i.e. there would be no formal evidentiary hearing). The arbitrator set the following briefing schedule at the initial pre-hearing conference: Claimant's brief was due on October 28, 2005; Respondent's response to Claimant's brief was due on December 2, 2005, and Claimant's reply was due on December 23, 2005. On October 28, 2005, Claimant filed a brief and other papers supporting its position. As NASD did not receive Respondent's response to Claimant's brief, NASD staff sent a letter to Respondent on December 2, 2005 reminding him of his deadline to submit a response and that Claimant's reply to his response would be due on December 23, 2005. In the same letter, NASD asked Respondent to confirm that his Answer did not contain a counterclaim alleging statutory employment discrimination. NASD asked Respondent to provide it with written clarification regarding this issue on or before December 9, 2005. NASD notified Respondent that if NASD did not receive a response from him regarding the possible counterclaim on or before December 9, 2005, NASD would presume that his Answer did not contain such a counterclaim. As NASD did not receive any response from Respondent to its December 2, 2005 letter, Respondent's Answer is deemed not to contain a counterclaim.

The arbitrator decided to wait until December 23, 2005, which was the final briefing deadline that he had set, before rendering a decision in order to provide Respondent with every opportunity to submit a response brief.

The arbitrator finds the following with respect to Respondent's participation in this matter:

1. On July 13, 2005, NASD mailed Respondent a copy of the Statement of Claim together with notice that his Answer was due on August 7, 2005. These documents were sent via certified mail, return receipt requested. The return receipt card was signed on July 15, 2005 and was returned to NASD on July 19, 2005.
2. On August 5, 2005, Respondent filed a Statement of Answer and a Uniform Submission Agreement.
3. On September 6, 2005, Respondent was sent notice of the identity of the arbitrator who would hear this matter as well as of the date and time of the initial pre-hearing conference; this notice was sent via certified mail, return receipt requested. The return receipt card was not sent back to NASD.
4. Respondent participated in the initial pre-hearing conference on September 29, 2005.
5. On October 13, 2005, NASD sent a copy of the scheduling order in this matter to Respondent via first class mail.

6. NASD's December 2, 2005 letter to Respondent (discussed above) was sent via Federal Express and first class mail. The Federal Express package was signed for on December 5, 2005.
7. None of the correspondence that was sent to Respondent by NASD using first-class mail has been returned to NASD by the U.S. post office.

Accordingly, the arbitrator hereby determines that Respondent received due notice of the claims against him and was aware of all relevant briefing deadlines in this matter. Accordingly, the arbitrator issues the following Award, as set forth below.

### **AWARD**

After considering the pleadings and Claimant's brief and supporting documentation, the arbitrator decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent is liable to and shall pay Claimant the sum of \$25,000.00 in compensatory damages.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) Any and all relief not specifically addressed herein 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	= \$ 750.00
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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 M.L. Stern & Co., LLC. is a party, and the following fees are assessed:

Member Surcharge	= \$ 425.00
<b>Total Member Fees</b>	<b>= \$ 425.00</b>

**Forum Fees and Assessments**

The arbitrator has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. The following forum fees are assessed:

One (1) pre-hearing conference session with a single arbitrator @ \$450.00/session = \$ 450.00  
Pre-hearing conference: September 29, 2005 1 session

Fee for deciding a case on the papers: = \$ 300.00  
**Total Forum Fees** = **\$ 750.00**

1. The arbitrator assessed \$375.00 of the forum fees to Claimant M.L. Stern & Co., LLC.
2. The arbitrator assessed \$375.00 of the forum fees to Respondent Jay M. Kim.

**Fee Summary**

1. Claimant M.L. Stern & Co., LLC. is charged with the following fees and costs:

Initial Filing Fee	= \$ 750.00
Member Fees	= \$ 425.00
<u>Forum Fees</u>	<u>= \$ 375.00</u>
Total Fees	= \$ 1,550.00
<u>Less payments</u>	<u>= \$(1,625.00)</u>
<b>Refund Due Claimant</b>	<b>= \$ (75.00)</b>
2. Respondent Jay M. Kim is charged with the following fees and costs:

Forum Fees	= \$ 375.00
<u>Less payments</u>	<u>= \$ (0.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 375.00</b>

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.

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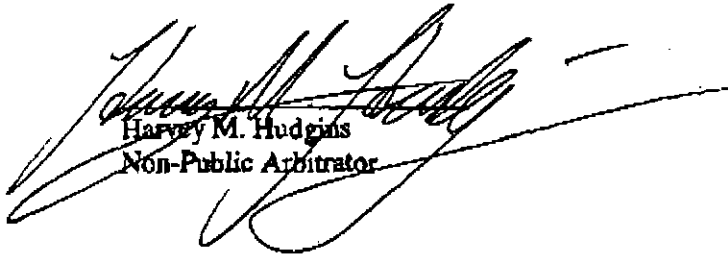
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**ARBITRATOR**

*Harvey M. Hudgins*

- *Non-Public Arbitrator*

**Arbitrator's Signature**



Harvey M. Hudgins  
Non-Public Arbitrator

12-29-05  
Signature Date

12/29/05  
Date of Service