

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Horwitz & Associates, Inc.

Case Number: 05-04056

Name of the Respondent
Terrence W. Toppin

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Member vs. Associated Person.

REPRESENTATION OF PARTIES

For Horwitz & Associates, Inc., hereinafter referred to as "Claimant": Helen B. Bloch, Esq., Bellows and Bellows, PC, Chicago, Illinois.

For Terrence W. Toppin, hereinafter referred to as "Respondent": Jose R. Riguera, Esq., Berman, Kean & Riguera, P.A., Fort Lauderdale, Florida.

CASE INFORMATION

Statement of Claim filed on or about: July 7, 2005.

Claimant signed the Uniform Submission Agreement: July 7, 2005.

Amended Statement of Claim filed on or about: August 23, 2005.

Answer to Amended Statement of Claim filed by Respondent on or about: October 31, 2005.

Respondent signed the Uniform Submission Agreement: November 2, 2005.

Motion to Dismiss Amended Statement of Claim Pursuant to Bankruptcy Discharge filed by Respondent on or about: November 16, 2005.

Response to Respondent's Motion to Dismiss Pursuant to Bankruptcy Discharge filed by Claimant on or about: December 19, 2005.

Respondent's Reply to Claimant's Response to Motion to Dismiss Pursuant to Bankruptcy Discharge filed on or about: March 10, 2006.

CASE SUMMARY

Claimant asserted claims for breach of contract and indemnification. The causes of action relate to Respondent's former employment with Claimant and the Branch Office of Non-Supervisory Jurisdiction Agreement dated March 9, 1999 entered into between the parties (the "Agreement").

Unless specifically admitted in his Statement of Answer, Respondent denied the allegations contained in the Statement of Claim, as amended, and asserted various defenses. In addition, Respondent asserted a Motion to Dismiss on the basis that Claimant's claims had been discharged under the United States Bankruptcy Code ("USBC").

In its response to Respondent's Motion to Dismiss, Claimant denied the allegations contained therein and asserted various defenses.

RELIEF REQUESTED

Claimant requested: 1) indemnification in the amount of \$139,273.64; 2) attorneys' fees and costs; 3) interest; and, 4) such additional relief as the undersigned arbitrators ("the Panel") deemed just.

Respondent requested: 1) that the Amended Statement of Claim be denied in its entirety; and, 2) any other relief that the Panel deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

On or about July 3, 2001, Respondent filed with the United States Bankruptcy Court, Southern District of Florida (the "Court") a voluntary petition for relief under Chapter 7 of the USBC. On or about October 16, 2001, the Court entered an Order granting Respondent a discharge from bankruptcy. Between September 2002 and August 2003, three separate claims were filed with NASD by Respondent's former clients, all of which were settled and paid by Claimant. Claimant thereafter demanded indemnification from Respondent, pursuant to the Agreement, for the full amount of the settlements that Claimant paid in the three claims, plus NASD fees as well as attorneys' fees and costs associated with the defense of each action. Thereafter, on or about March 2, 2005, Claimant filed an action in the Circuit Court of Cook County, Illinois (the "Circuit Court"), to enforce the indemnification portion of the parties' Agreement. In response, Respondent moved the Circuit Court to compel the parties to arbitrate before NASD. On or about June 16, 2005, the Circuit Court issued an Order that granted Respondent's motion to compel arbitration.

Respondent asserted a Motion to Dismiss on the basis that Claimant's claims had been discharged under the USBC. In its response, Claimant asserted that the underlying actions for which it sought indemnification per the terms of the parties' Agreement were not in existence at the time Respondent filed under Chapter 7; thus, this debt could not have been discharged in bankruptcy. On or about March 20, 2006, the Panel issued an Order that denied Respondent's Motion to Dismiss Amended Statement of Claim Pursuant to Bankruptcy Discharge.

The parties have agreed that the Award in this matter may be executed in counterpart copies.

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:

Claimant's claims are denied in their entirety.

Any and all claims for relief not specifically addressed herein, including Claimant's request for attorneys' fees, are denied.

FEES

Pursuant to NASD Code of Arbitration Procedure (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	= \$1,000.00
--------------------------	--------------

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 person at the time of the events giving rise to the dispute. In this matter, the member firm Horwitz & Associates, Inc. is a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$2,750.00</u>
Total Member Fees	= \$5,200.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournment fees assessed during these proceedings.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No three-day cancellation fees were incurred in this matter.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were incurred in this matter.

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 arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Decision on a discovery-related motion on the papers with One (1) arbitrator @ \$200.00	= \$ 200.00
Respondent submitted one (1) discovery-related motion	
Three (3) Pre-hearing sessions with the Panel @ \$1,125.00/ session	= \$ 3,375.00
Pre-hearing conferences: January 20, 2006	1 session
March 20, 2006	1 session
June 21, 2006	1 session
Five (5) Hearing sessions @ \$1,125.00/ session	= \$5,625.00
Hearing Dates: October 17, 2006	2 sessions
October 18, 2006	2 sessions
October 19, 2006	1 session
Total Forum Fees	= \$9,200.00

The Panel has assessed the total forum fees of \$9,200.00 to Claimant.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to; additional copies of arbitrator awards; copies of audio transcripts; retrieval of documents from archives; interpreters; and, security.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 5,200.00
Forum Fees	= \$ 9,200.00
Total Fees	= \$15,400.00
Less payments	= \$ 7,325.00
Balance Due NASD Dispute Resolution	= \$ 8,075.00

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

ARBITRATION PANEL

Ken Ziesenheim, JD	-	Non-Public Arbitrator, Presiding Chairperson
Geraldine A. Genco	-	Non-Public Arbitrator
Dione E. Houchins	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

<u>/s/</u>	<u>10/20/2006</u>
------------	-------------------

<u>Ken Ziesenheim, JD</u>	<u>Signature Date</u>
Non-Public Arbitrator, Presiding Chairperson	

<u>/s/</u>	<u>10/20/2006</u>
------------	-------------------

<u>Geraldine A. Genco</u>	<u>Signature Date</u>
Non-Public Arbitrator	

<u>/s/</u>	<u>10/20/2006</u>
------------	-------------------

<u>Dione E. Houchins</u>	<u>Signature Date</u>
Non-Public Arbitrator	

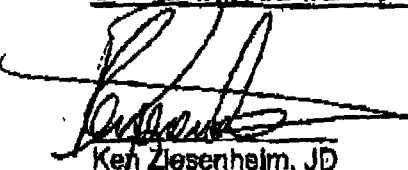
October 23, 2006

Date of Service (For NASD Dispute Resolution office use only)

ARBITRATION PANEL

Ken Ziesenheim, JD	-	Non-Public Arbitrator, Presiding Chairperson
Geraldine A. Genco	-	Non-Public Arbitrator
Dione E. Houchins	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Ken Ziesenheim, JD
Non-Public Arbitrator, Presiding Chairperson

10/20/06
Signature Date

Geraldine A. Genco
Non-Public Arbitrator

Signature Date

Dione E. Houchins
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

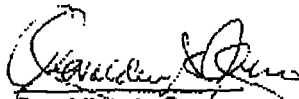
ARBITRATION PANEL

Ken Ziesenheim, JD	-	Non-Public Arbitrator, Presiding Chairperson
Geraldine A. Genco	-	Non-Public Arbitrator
Dione E. Houchins	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Ken Ziesenheim, JD
Non-Public Arbitrator, Presiding Chairperson

Signature Date


Geraldine A. Genco
Non-Public Arbitrator

10/20/06
Signature Date

Dione E. Houchins
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

ARBITRATION PANEL

Ken Ziesenheim, JD	-	Non-Public Arbitrator, Presiding Chairperson
Geraldine A. Genco	-	Non-Public Arbitrator
Dione E. Houchins	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Ken Ziesenheim, JD
Non-Public Arbitrator, Presiding Chairperson

Signature Date

Geraldine A. Genco
Non-Public Arbitrator

Signature Date

Dione E. Houchins
Dione E. Houchins
Non-Public Arbitrator

October 20, 2006
Signature Date

Date of Service (For NASD Dispute Resolution office use only)