

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

James Singer, James Singer IRA, and James Singer Corp. (Claimants) vs. C.E. Unterberg Towbin, LLC (Respondent)

Case Number: 05-04562

Hearing Site: New York, New York

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

**REPRESENTATION OF PARTIES**

Claimants James Singer ("Singer"), James Singer IRA ("Singer IRA"), and James Singer Corp. ("Singer Corp.") hereinafter collectively referred to as "Claimants": Robert S. Churchill, Esq., and Brendan R. Marx, Esq., Eaton & Van Winkle LLP, New York, NY.

Respondent C.E. Unterberg Towbin, LLC ("C.E. Unterberg") hereinafter referred to as "Respondent": David W. R. Wawro, Esq., and Sarah L. Jensen, Esq., Torys LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: August 29, 2005.

Motion to Amend Statement of Claim and Amended Statement of Claim filed on or about: February 17, 2006.

Singer signed the Uniform Submission Agreement: August 26, 2005.

Singer IRA signed the Uniform Submission Agreement: August 26, 2005.

Singer Corp. signed the Uniform Submission Agreement: August 26, 2005.

Statement of Answer filed by Respondent on or about: October 28, 2005.

Amended Statement of Answer filed by Respondent on or about: November 16, 2005.

Respondent did not submit a Uniform Submission Agreement.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of contract, breach of fiduciary duty, and misrepresentations. The causes of action relate to capital contributions made by Claimants into a partnership with Respondent as well as additional compensation owed to Claimants for the year 2004.

Unless specifically admitted in its Amended Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$1,482,811.00 plus interest, costs, and forum fees.

Respondent requested dismissal of the Statement of Claim in its entirety, costs, attorneys' fees, expenses, and forum fees.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondent did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

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. Claimants' claims are denied in their entirety.
2. 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 will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$	500.00
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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 person at the time of the events giving rise to the dispute. Accordingly, C.E. Unterberg Towbin, LLC is a party.

Member surcharge	= \$	2,800.00
Pre-hearing process fee	= \$	750.00

Hearing process fee = \$ 5,000.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

May 10-12, 2006 adjournment by Claimants = \$ WAIVED

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. 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) Pre-hearing session with single arbitrator @ \$450.00 = \$ 450.00  
Pre-hearing conference: April 7, 2006 1 session

Two (2) Pre-hearing sessions with Panel @ \$1,200.00 = \$ 2,400.00  
Pre-hearing conferences: January 9, 2006 1 session  
September 5, 2006 1 session

Twelve (12) Hearing sessions with Panel @ \$1,200.00 = \$ 14,400.00  
Hearing date: October 16, 2006 2 sessions  
October 17, 2006 2 sessions  
October 18, 2006 2 sessions  
October 19, 2006 1 session  
November 27, 2006 1 session  
November 28, 2006 2 sessions  
November 29, 2006 1 session  
January 18, 2007 1 session

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Total Forum Fees = \$ 17,250.00

1. The Panel has assessed \$8,625.00 of the forum fees to Claimants, jointly and severally.
2. The Panel has assessed \$8,625.00 of the forum fees to Respondent.

**Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 8,625.00
Total Fees	= \$ 9,125.00
Less payments	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$ 7,425.00

2. Respondent is solely liable for:

Member Fees	= \$	8,550.00
Forum Fees	= \$	8,625.00
Total Fees	= \$	17,175 .00
Less payments	= \$	8,550.00
Balance Due NASD Dispute Resolution	= \$	8,625.00

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

**ARBITRATION PANEL**

Joel P. Mellis, Esq. - Public Arbitrator, Presiding Chairperson  
Aaron Tyk, Esq. - Public Arbitrator  
Jeffrey H. Farrar - Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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.



Joel P. Mellis, Esq.  
Public Arbitrator, Presiding Chairperson

1/23/07  
Signature Date

\_\_\_\_\_  
Aaron Tyk, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Jeffrey H. Farrar  
Non-Public Arbitrator

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Signature Date

**January 23, 2007**

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

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Signature Date

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Aaron Tyk, Esq.  
Public Arbitrator

1/19/07  
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