

**AWARD**  
**NASD Dispute Resolution**

---

In the Matter of the Arbitration Between:

Name of Claimant

James H. Lee

vs.

Case Number: 05-04695  
Hearing Site: Houston, Texas

Name of Respondent

Andrew Koval

---

**NATURE OF THE DISPUTE**

Associated Person vs. Customer

**REPRESENTATION OF PARTIES**

James H. Lee ("Claimant") was represented by Mitchell D. Savrick, Esq., Savrick, Schumann, Johnson, McGarr & Kaminski, Austin, Texas.

Andrew Koval ("Respondent") was represented by Jack C. Ogg, Esq., Jack C. Ogg & Associates, Houston, Texas.

**CASE INFORMATION**

The Statement of Claim was filed on or about September 8, 2005. The Submission Agreement of Claimant, James H. Lee, was signed on or about December 1, 2005.

The Statement of Answer was filed by Respondent, Andrew Koval, on or about March 24, 2006. The Submission Agreement of Respondent, Andrew Koval, was signed on or about March 24, 2006.

**CASE SUMMARY**

Claimant asserted the following cause of action: breach of promissory note. Claimant alleged that Respondent signed a promissory note, which he later failed to timely pay.

Unless specifically admitted in his Answer, Respondent denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim failed to state a claim upon which relief can be granted; Claimant's claims are barred by the doctrine of estoppel; Claimant's claim are barred as there was a

failure of consideration, in that Koval never actually had control, use, or dominion of the alleged loan monies; Claimant's claims are barred as there is offset and credit, in terms of Claimant's illicit profits from the use of the money; and Claimant's claims are barred as Claimant is being unjustly enriched.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$ 80,000.00
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondent requested that the claims asserted against him be denied in their entirety and that he be awarded his costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

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, the evidence presented at the hearing, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Respondent, Andrew Koval, is liable for and shall pay to Claimant, James H. Lee, the sum of \$80,000.00 in compensatory damages;
- 2.) Respondent, Andrew Koval, is liable for and shall pay to Claimant, James H. Lee, the sum of \$57,000.00 in interest;
- 3.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 4.) Any relief not specifically enumerated, including attorneys' fees, is hereby denied with prejudice.

## **FEES**

Pursuant to the Code, the following fees are assessed:

### **Filing Fees**

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial Claim filing fee = \$ 225.00

### **Forum Fees and Assessments**

The Panel has assessed forum fees for each hearing 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) Pre-hearing session with Panel x \$750.00 = \$ 750.00  
Pre-hearing conference: June 6, 2006 1 session

Three (3) Hearing sessions x \$750.00 = \$ 2,250.00  
Hearing Date: August 14, 2006 3 sessions

Total Forum Fees = \$ 3,000.00

The Panel has assessed \$1,500.00 of the forum fees to James H. Lee.

The Panel has assessed \$1,500.00 of the forum fees to Andrew Koval.

## **FEE SUMMARY**

Claimant, James H. Lee, is liable for:

Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	<u>= \$ 1,500.00</u>
<u>Total Fees</u>	<u>= \$ 1,725.00</u>
<u>Less payments</u>	<u>= \$ 1,425.00</u>
Balance Due NASD Dispute Resolution	= \$ 300.00

Respondent, Andrew Koval, is liable for:

<u>Forum Fees</u>	<u>= \$ 1,500.00</u>
<u>Total Fees</u>	<u>= \$ 1,500.00</u>
<u>Less payments</u>	<u>= \$ 0.00</u>

Balance Due NASD Dispute Resolution = \$ 1,500.00

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

**ARBITRATION PANEL**

William J. Hawkins, Esq. - Public Arbitrator, Presiding Chair  
Bertrand C. Moser, Esq. - Public Arbitrator  
Jane E. Bates - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

/s/ William J. Hawkins, Esq.  
William J. Hawkins, Esq.  
Public Arbitrator, Presiding Chair

September 29, 2006  
Signature Date

/s/ Bertrand C. Moser, Esq.  
Bertrand C. Moser, Esq.  
Public Arbitrator

September 29, 2006  
Signature Date

/s/ Jane E. Bates  
Jane E. Bates  
Non-Public Arbitrator

September 29, 2006  
Signature Date

September 29, 2006  
Date of Service (For NASD office use only)

Balance Due NASD Dispute Resolution


= \$ 1,500.00

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

**ARBITRATION PANEL**

William J. Hawkins, Esq. - Public Arbitrator, Presiding Chair  
Bertrand C. Moser, Esq. - Public Arbitrator  
Jane E. Bates - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

  
\_\_\_\_\_  
William J. Hawkins, Esq.  
Public Arbitrator, Presiding Chair

9/29/06  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Bertrand C. Moser, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Jane E. Bates  
Non-Public Arbitrator

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

\_\_\_\_\_  
Date of Service (For NASD office use only)

Balance Due NASD Dispute Resolution

= \$ 1,500.00

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

**ARBITRATION PANEL**

William J. Hawkins, Esq. - Public Arbitrator, Presiding Chair  
Bertrand C. Moser, Esq. - Public Arbitrator  
Jane E. Bates - Non-Public Arbitrator

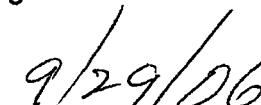
Concurring Arbitrators' Signatures:

\_\_\_\_\_  
William J. Hawkins, Esq.  
Public Arbitrator, Presiding Chair

  
\_\_\_\_\_  
Bertrand C. Moser, Esq.

Public Arbitrator

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

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

\_\_\_\_\_  
Jane E. Bates  
Non-Public Arbitrator

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

\_\_\_\_\_  
Date of Service (For NASD office use only)

Balance Due NASD Dispute Resolution

= \$ 1,500.00

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

**ARBITRATION PANEL**

William J. Hawkins, Esq. - Public Arbitrator, Presiding Chair  
Bertrand C. Moser, Esq. - Public Arbitrator  
Jane E. Bates - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

\_\_\_\_\_  
William J. Hawkins, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Bertrand C. Moser, Esq.  
Public Arbitrator

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

  
\_\_\_\_\_  
Jane E. Bates  
Non-Public Arbitrator

9/29/06  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date of Service (For NASD office use only)