

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

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In the Matter of the Arbitration Between:

American Capital Partners, LLC (Claimant) vs. David Lomedico (Respondent)

Case Number: 05-04712

Hearing Site: New York City, New York

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Nature of the Dispute: Member vs. Associated Person

**REPRESENTATION OF PARTIES**

Claimant American Capital Partners, LLC hereinafter referred to as "Claimant": J. Christopher Albanese, Esq., American Capital Partners, LLC, Hauppauge, NY.

Respondent David Lomedico hereinafter referred to as "Respondent": Howard E. Greenberg, Esq., Law Offices of Howard E. Greenberg, Esq., P.C., Smithtown, NY.

**CASE INFORMATION**

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

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

Statement of Answer and Counterclaim filed by Respondent on or about: November 6, 2005.

Respondent signed the Uniform Submission Agreement: November 6, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract, breach of Employment Agreement, indemnification, and theft of proprietary information.

Unless specifically admitted in his Answer, Respondent denied the allegations made in the Statement of Claim.

In his Counterclaim, Respondent asserted the following cause of action: unpaid commissions.

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$85,000.00 plus interest from August 26, 2005, unspecified damages for breach of contract claims, interest, unspecified damages for theft of proprietary information claim, an Order from the Panel directing Respondent to return all documents belonging to Claimant, filing fees, costs, attorneys' fees, and any and all additional relief the Panel may deem just and proper.

Respondent requested dismissal of the Statement of Claim in its entirety and any such other and further relief as the Panel deems proper.

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Respondent requested dismissal of the Statement of Claim in its entirety and any such other and further relief as the Panel deems proper.

In his Counterclaim, Respondent requested compensatory damages in the amount of \$8,000.00.

### **OTHER ISSUES CONSIDERED AND 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 and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are dismissed in their entirety.
2. Respondent's counterclaim is dismissed in its entirety.
3. Each party shall bear its own costs.
4. 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	= \$ 1,000.00
Counterclaim filing fee	= \$ 75.00

#### **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. Accordingly, American Capital Partners, LLC is a party.

Member surcharge	= \$ 1,100.00
Hearing process fee	= \$ 750.00
Pre-hearing process fee	= \$ 1,700.00

#### **Forum Fees and Assessments**

The Arbitrator 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 arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) Pre-hearing sessions with Panel @ \$750.00	= \$ 2,250.00
Pre-hearing conferences:	
January 4, 2006	1 session
February 7, 2006	1 session
March 21, 2006	1 session

Two (2) Hearing sessions with Panel @ \$750.00	= \$	1,500.00
<u>Hearing Dates:</u> April 25, 2006 2 sessions		
Total Forum Fees	= \$	3,750.00

1. The Panel has assessed \$1,875.00 of the forum fees to Claimant.
2. The Panel has assessed \$1,875.00 of the forum fees to Respondent.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$	1,000.00
Member Fees	= \$	3,550.00
Forum Fees	= \$	1,875.00
Total Fees	= \$	6,425.00
<u>Less payments</u>	= \$	7,000.00
Refund Due Claimant	= \$	575.00

2. Respondent is solely liable for:

Counterclaim Filing Fee	= \$	75.00
Forum Fees	= \$	1,875.00
Total Fees	= \$	1,950.00
<u>Less payments</u>	= \$	0.00
Balance Due NASD Dispute Resolution	= \$	1,950.00

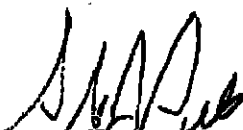
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Stephen J. Patti, Esq.            -    Non-Public Arbitrator, Presiding Chairperson  
Eric J. Sussman, Esq.           -    Non-Public Arbitrator  
Orestes J. Mihaly, Esq.        -    Non-Public Arbitrator

**Concurring Arbitrators' Signature**

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.

  
\_\_\_\_\_  
Stephen J. Patti, Esq.  
Non-Public Arbitrator, Presiding Chairperson

4/27/06  
\_\_\_\_\_  
Signature Date

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Non-Public Arbitrator

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Signature Date

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Signature Date

May 1, 2006  
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Date of Service (For NASD Dispute Resolution use only)

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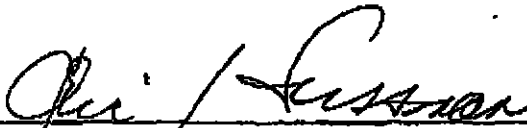
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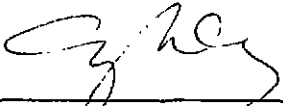
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In his Counterclaim, Respondent requested compensatory damages in the amount of \$8,000.00.

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### **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. Claimant's claims are dismissed in their entirety.
2. Respondent's counterclaim is dismissed in its entirety.
3. Each party shall bear its own costs.
4. Any and all relief not specifically addressed herein is denied.

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Total Forum Fees = \$ 3,750.00

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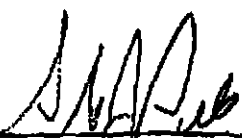
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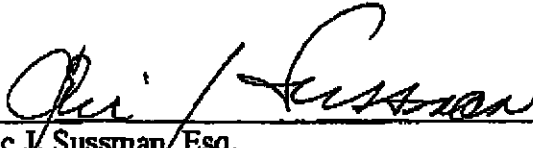
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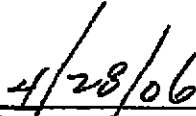
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