

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

American Capital Partners, LLC (Claimant) vs. Brad Mitchell (Respondent)

Case Number: 05-04890

Hearing Site: New York, New York

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 Brad Mitchell hereinafter referred to as "Respondent" appeared *pro se*.

CASE INFORMATION

Statement of Claim filed on or about: September 16, 2005.

Claimant signed the Uniform Submission Agreement: September 16, 2005.

Statement of Answer filed by Respondent on or about: October 20, 2005.

Respondent signed the Uniform Submission Agreement: October 12, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: breach of the promissory note, breach of the employment agreement, specifically the covenant not to compete clause.

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

RELIEF REQUESTED

Claimant requested the promissory note balance of \$25,000.00 plus statutory interest from August 9, 2005, unspecified compensatory damages, filing fees and costs incurred in this proceeding, attorney's fees and any additional relief the Panel may deem just and proper.

Respondent requested a reduction of the loan to \$10,000.00.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made by the Claimant, the undersigned arbitrator (the "Arbitrator") determined that Respondent has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

At the hearing in this matter, Claimant reduced its request for damages from \$25,000 to \$21,847.89.

Claimant has 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 Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable for and shall pay to Claimant compensatory damages in the amount of \$21,847.89 plus interest at the rate of nine percent per annum from August 9, 2005 until the Respondent satisfies the terms of the promissory note.
2. Respondent is liable for and shall pay to Claimant attorneys' fees in the amount of \$6,500.00 pursuant to the terms of the promissory note.
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 will retain or collect the non-refundable filing fees for each claim:
Initial claim filing fee = \$750.00

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 = \$425.00

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:

One (1) Pre-hearing session with a single arbitrator @ \$450.00 = \$450.00
Pre-hearing conference: February 22, 2006 1 session

One (1) Hearing session @ \$450.00	= \$450.00
Hearing Date: May 1, 2006 1 session	
Total Forum Fees	= \$900.00

1. The Arbitrator has assessed \$900.00 of the forum fees to Respondent.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 750.00
Member Fees	= \$ 425.00
Total Fees	= \$1,175.00
Less payments	= \$1,625.00
Refund Due Claimant	= \$ 450.00

2. Respondent is solely liable for:

Forum Fees	= \$ 900.00
Total Fees	= \$ 900.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 900.00

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

ARBITRATION PANEL

David G. Rosenthal

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Sole Non-Public Arbitrator

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.



David G. Rosenthal
Sole Non-Public Arbitrator

5/18/06
Signature Date

May 26, 2006

Date of Service (For NASD Dispute Resolution use only)