

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant  
Robert W. Baird & Co. Incorporated

Case Number: 05-04952

Name of the Respondent  
Mark McKoan

Hearing Site: Tampa, Florida

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Nature of the Dispute: Member vs. Associated Person.

**REPRESENTATION OF PARTIES**

Robert W. Baird & Co. Incorporated, hereinafter referred to as "Claimant": Moira K. Moran, Vice President and Staff Attorney to Claimant, and Brian D. Trexell, Associate General Counsel to Claimant, Milwaukee, Wisconsin.

Mark McKoan, hereinafter referred to as "Respondent", appeared *pro se*.

**CASE INFORMATION**

Statement of Claim filed on or about: September 21, 2005.

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

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

Respondent did not file a Statement of Answer or executed Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted a claim of breach of contract for repayment of amounts due and owing from Respondent that arise from his employment with Claimant. The claim relates to an unforgiven balance owed pursuant to a certain promissory note dated November 1, 2004.

**RELIEF REQUESTED**

Claimant requested: 1) compensatory damages in the amount of \$84,168.58; 2) interest; 3) costs; 4) attorneys' fees; and 5) such other relief the undersigned arbitrators (the "Panel") deemed just and proper.

### **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 is bound by the determination of the Panel.

On November 7, 2005, Claimant filed an Amended Statement of Claim. On December 1, 2005, Claimant served discovery requests on the Respondent. On April 3, 2006, Claimant moved to preclude the Respondent from presentation of evidence for failure to respond to Claimant's Statement of Claim and, in the alternative, to compel a response to the Statement of Claim and a response to Claimant's discovery requests. On April 3, 2006, the Chairperson, the Claimant and the Respondent participated in a telephonic hearing. During this hearing, the Chairperson ordered the Respondent to respond to Claimant's Statement of Claim and discovery requests by April 7, 2006. Respondent failed to respond to the Claimant's Statement of Claim or its discovery requests.

On April 28, 2006, the Panel, including Chairperson Grant and Arbitrator Boyer, held an additional hearing on Claimant's Motion to Preclude the Presentation of Evidence to determine whether to preclude the Claimant from presentation of evidence in the hearing scheduled for May 9 – 10, 2006. Arbitrator Savitt was unable to attend the pre-hearing conference, but Claimant agreed to accept the ruling of Arbitrators Grant and Boyer as the decision of the full Panel. Moira K. Moran, Staff Attorney, and Brian D. Trexell, Associate General Counsel, appeared for Claimant. Mark W. McKoan, *pro se* Respondent, did not appear after notice and several attempts to reach him at his home, place of business and his mobile phone. The Panel granted Claimant's motion precluding the Claimant from presentation of evidence based on his failure to respond to the April 3, 2006 Order. After the Motion to Preclude the Presentation of Evidence had been granted, Claimant then moved for summary judgment, reasoning that there were no facts in dispute, given Claimant's failure to respond to any pleadings and his inability to present evidence. The Panel granted Claimant's Motion for Summary Judgment.

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 and the record, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable and shall pay to Claimant compensatory damages in the amount of \$84,168.58, the amount due on the promissory note executed by Respondent, plus interest in the amount of \$5,320.62 that has accrued from the date of Respondent's resignation on April 15, 2005 through the date of the Panel's Order entered on April 28, 2006, in accordance with the terms of the promissory note. Pursuant to the promissory note, interest will continue to accrue at the Florida legal rate if the Award is not paid within thirty (30) days of service of the Award.

2. Respondent is liable and shall reimburse Claimant \$1,000.00 representing the claim filing fee previously paid by Claimant to NASD Dispute Resolution.
3. Claimant's request for attorneys' fees is denied.
4. Any and all claims for relief not specifically addressed herein are 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
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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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Claimant is a party and a member firm.

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

#### **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:

There were no three-day cancellation fees assessed during these proceedings.

#### **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.

There were no injunctive relief fees assessed during these proceedings.

#### **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 arbitrator(s), including a pre-hearing conference with the

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

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00/session = \$ 900.00  
Pre-hearing conferences: April 3, 2006 1 session  
April 10, 2006 1 session

Two (2) Pre-hearing sessions with Panel @ \$750.00/session = \$1,500.00  
Pre-hearing conferences: January 25, 2006 1 session  
April 28, 2006 1 session

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Total Forum Fees = \$2,400.00

The Panel has assessed \$2,400.00 of the forum fees to Respondent.

### **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 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 assessed during these proceedings.

### **Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$1,000.00
<u>Member Fees</u>	<u>= \$3,550.00</u>
Total Fees	= \$4,550.00
<u>Less payments</u>	<u>= \$4,550.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent is solely liable for:

<u>Forum Fees</u>	<u>= \$2,400.00</u>
Total Fees	= \$2,400.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$2,400.00

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

### **ARBITRATION PANEL**

Terrence W. Grant	-	Non-Public Arbitrator, Presiding Chairperson
Stephen P. Savitt	-	Non-Public Arbitrator
James R. Boyer	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
Terrence W. Grant  
Non-Public Arbitrator, Presiding Chairperson

May 19, 2006  
Signature Date

/s/  
Stephen P. Savitt  
Non-Public Arbitrator

May 18, 2006  
Signature Date

/s/  
James R. Boyer  
Non-Public Arbitrator

May 18, 2006  
Signature Date

May 23, 2006  
Date of Service (For NASD Dispute Resolution use only)

**Concurring Arbitrators' Signatures**



Terrence W. Grant  
Non-Public Arbitrator, Presiding Chairperson

5/19/06  
Signature Date

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Stephen P. Savitt  
Non-Public Arbitrator

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

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James R. Boyer  
Non-Public Arbitrator

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Terrence W. Grant  
Non-Public Arbitrator, Presiding Chairperson

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Signature Date

  
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Stephen P. Savitt  
Non-Public Arbitrator

5/18/06  
Signature Date

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James R. Boyer  
Non-Public Arbitrator

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Signature Date

  
James R. Boyer  
Non-Public Arbitrator

5-18-06  
Signature Date

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Date of Service (For NASD Dispute Resolution use only)