

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of Claimant

Bruce R. Trabb

vs.

Case Number: 05-04994
Hearing Site: Chicago, Illinois

Name of Respondent

J.P. Morgan Securities, Inc. f/k/a Banc One Capital Markets, Inc.

NATURE OF THE DISPUTE

Associated Person vs. Member

REPRESENTATION OF PARTIES

Bruce R. Trabb ("Claimant") was represented by Michael M. Mulder, Esq., Meites, Mulder, Mollica & Glink, Chicago, Illinois.

J.P. Morgan Securities, Inc. f/k/a Banc One Capital Markets, Inc. ("Respondent") was represented by Anna Wermuth, Esq., Meckler, Bulger & Tilson, LLP, Chicago, Illinois.

CASE INFORMATION

The Statement of Claim was filed on or about September 23, 2005. The Submission Agreement of Claimant, Bruce R. Trabb, was signed on or about August 27, 2005. On or about October 19, 2006, Claimant filed a Response to the Motion to Dismiss.

The Statement of Answer was filed by Respondent, J.P. Morgan Securities, Inc. f/k/a Banc One Capital Markets, Inc., on or about November 16, 2005. The Submission Agreement of Respondent, J.P. Morgan Securities, Inc. f/k/a Banc One Capital Markets, Inc., was signed on or about November 16, 2005. Respondent filed a Motion to Dismiss on or about November 18, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: violations of the Illinois Wage Payment and Collection Act; breach of contract; lost commissions; promissory estoppel; and unjust enrichment. Claimant alleged that an Agreement was entered into by Banc One Capital Markets, Inc. ("BOCM") to pay him a commission of 15% on the revenues produced by the

product he developed as a violation of the Illinois Wage Payment and Collection Act ("IWPCA") and based on an alleged oral contract for the 15% commission described above. The IWPCA claim was set forth as Count I and the contract claim was set forth as Count II. Count III alleged that BOCM and Claimant entered into an oral contract or that BOCM made Claimant a promise ultimately creating promissory estoppel shortly after Claimant had been notified of his termination or RIFF. That subsequent to the alleged contract or promise, he worked pursuant thereto in the 30 day period prior to the date he was to be actually terminated. On the date set for his termination in his RIFF notice, he was in fact terminated, allegedly in breach of his oral contract or the alleged promise. Claimant also alleged that Respondent was unjustly enriched by the profit it made by using his product and by using the improvements he made to the product during the 30 day period after his alleged oral contract/promise, after his termination when he had been told that the reason for his termination was BOCM's decision to cease selling the product.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant failed to state a claim upon which relief can be granted; Claimant was an at-will employee and therefore cannot state a claim for breach of contract; Claimant has not suffered any damages of the actions of Respondent; Claimant failed to mitigate his damages; Claimant is barred from any recovery by the doctrine of unclean hands; Claimant is barred from recovery by the doctrines of laches and estoppel; Claimant is barred from recovery by the statute of frauds; and Claimant is barred from recovery by the applicable statutes of limitations.

RELIEF REQUESTED

Claimant requested an award in the amount of:

Actual/Compensatory Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondent requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

At the final hearing, prior to the presentation of any evidence, Respondent presented its Motion to Dismiss. Respondent asserted that 1) the alleged Agreement and oral contracts on which Claimant relied on for Counts I, II, and III of the Statement of Claim are barred by the Statute of Frauds; 2) the allegations creating the alleged oral contract claim in Count III

failed to state a claim because the contention that Claimant did not set forth definite contractual terms and that the allegations demonstrated that Banc One did not breach the alleged contract; and 3) that Claimant's quasi-contract claims in Count III failed as a matter of law because a) Claimant having alleged the existence of a contract may not also proceed on quasi-contract claims or in the alternative; b) that promissory estoppel cannot be an offensive cause of action; or c) that an unjust enrichment claim may not be brought by an employee against his employer.

Claimant's Response to the Motion to Dismiss was 1) the Statute of Frauds does not apply to claims (Count I) under the Illinois Wage Payment and Collection Act; 2) that the contract alleged in Count II could have been performed within a year, and the evidence should be heard on that issue; 3) Claimant made no direct response to the Statute of Frauds part of the Motion to Dismiss as it related to Count III; 4) that Claimant had alleged enough facts to create a contract claim under Count III; 5) that so long as Respondent denied that a contract existed, Claimant could continue to proceed simultaneously on his quasi-contract claims until either, Respondent admitted the existence of a contract or the Panel found that a contract existed. Claimant admitted that in the event that a contract was in existence that it would be barred from also proceeding under his quasi-contract claims; 6) the promissory estoppel could be an offensive cause of action; and 7) that unjust enrichment could be a valid claim by an employee against an employer.

The Panel ruled that 1) Respondent's Motion to Dismiss based on the Statute of Frauds was denied; 2) all of Respondent's asserted reasons to dismiss Count III were denied, but the Panel said it would also take the Motion under advisement, since it had just been handed both the Motion related documents and supporting and opposing cases. The Panel invited Respondent, if it desired, to re-argue the Motion related to Count III at the close of Claimant's case.

At the close of Claimant's case, Respondent renewed and re-argued its Motion to Dismiss Count III described above. Claimant's response also re-argued, was the same as described above.

The Panel ruled that Respondent's Motion to Dismiss Claimant's contract claim in Count III was granted and Respondent's Motion to Dismiss Claimant's unjust enrichment was also granted. Respondent's Motion to Dismiss Claimant's promissory estoppel claim was denied. Evidence related to that complaint continued to be offered and was addressed by the Panel in its deliberation and Award.

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

- 1.) As to Count I, the claim for commission based on an alleged agreement to pay Claimant a 15% commission on the amount of revenue BOCM received from the product Claimant developed and assisted in the sale thereof for the period of January 1, 2000 – December 31, 2000; the breach of which was asserted to be a violation of the IWPCA, the Panel held, by a majority vote, that there was an agreement between Claimant and BOCM sufficient to be an "Agreement" under IWPCA;
- 2.) The Panel then acting under its internal agreement, as cited above as #1, that an Agreement existed by taking it as the law of the case, the Panel unanimously found all of the following matters and made the award of compensation to Claimant set forth below;
- 3.) That the Agreement was legally terminated by BOCM as of August 29, 2000, that such termination was communicated to Claimant on said date and that such termination cut off Claimant's right of compensation of the 15% commission, thereafter;
- 4.) That BOCM breached the Agreement by failing to pay Claimant his commission earned in the period from January 1, 2000 through August 29, 2000 of 15% of revenue of \$1,622,598, which is \$243,390;
- 5.) That as a result of BOCM's breach, the Panel awards Claimant the following amounts;
 - a) Respondent, J.P. Morgan Securities, Inc. f/k/a Banc One Capital Markets, Inc., is liable and shall pay to Claimant, Bruce R. Trabb, the sum of \$243,390 in compensatory damages, which is 15% of \$1,622,598 of revenue;
 - b) Respondent, J.P. Morgan Securities, Inc. f/k/a Banc One Capital Markets, Inc., is liable and shall pay to Claimant, Bruce R. Trabb, \$76,050 in pre-Award interest on the above-stated sum based on 5% simple interest for the period commencing September 1, 2000 through and including October 31, 2006;
 - c) Respondent, J.P. Morgan Securities, Inc. f/k/a Banc One Capital Markets, Inc., is liable and shall pay to Claimant, Bruce

R. Trabb, \$7,302 – the amount which at 3% compensation should have been deposited in Claimant's pension;

d) Respondent, J.P. Morgan Securities, Inc. f/k/a Banc One Capital Markets, Inc., is liable and shall pay to Claimant, Bruce R. Trabb, \$2,054 in pre-Award interest on the above-stated sum based on 4.5% simple interest for the period commencing September 1, 2000 through and including October 31, 2006;

- 6.) As to Count II, since the Award for Claimant's contract claim in Count II would have been the same as for Count I, the Panel did not consider Count II;
- 7.) As to Count III, the surviving portion of Count III was a claim based on an alleged promise which, with three other considerations rose to promissory estoppel, the Panel found that Claimant did not bear his burden of proof (by a preponderance) and hence that his remaining claim in Count III was denied;
- 8.) The Panel notes that the evidence showed that the decision to discontinue the product Claimant had developed was made for a valid business reason, that Claimant was RIFFed because his entire job related to the product, that Claimant was viewed at the time of his termination as an excellent employee and at the hearing by one of J.P. Morgan's witnesses was described as "a fine employee" and that the decision not to discontinue the product Claimant had developed was made after Claimant's departure from BOCM also for a valid (albeit different) business reasons;
- 9.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 10.) Any relief not specifically enumerated, including attorneys' fees, is hereby denied with prejudice as are all of Respondent's affirmative defenses.

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 = \$ 250.00

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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is J.P. Morgan Securities, Inc. f/k/a Banc One Capital Markets, Inc.

Member surcharge	= \$ 1,500.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,200.00

Adjournment Fees

Adjournments granted during these proceedings:

July 18-21, 2006, adjournment requested by Respondent	= \$ 1,000.00
October 16-20, 2006, adjournment requested by Respondent (Waived by the Panel)	= \$ 1,500.00

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:

Three (3) Decisions on discovery-related motions on the papers with one (1) arbitrator @ \$200.00	= \$ 600.00
Claimant submitted one (1) discovery-related motion	
Respondent submitted two (2) discovery-related motions	

One (1) Pre-hearing session with Panel x \$1,000.00	= \$ 1,000.00
Pre-hearing conference: January 31, 2006	1 session

Nine (9) Hearing sessions x \$1,000.00	= \$ 9,000.00
Hearing Dates:	
October 23, 2006	2 sessions
October 24, 2006	2 sessions
October 25, 2006	2 sessions
October 26, 2006	2 sessions
October 27, 2006	1 session

Total Forum Fees	= \$ 10,600.00
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The Panel has assessed \$5,300.00 of the forum fees to Bruce R. Trabb.

The Panel has assessed \$5,300.00 of the forum fees to J.P. Morgan Securities, Inc. f/k/a Banc One Capital Markets, Inc.

FEE SUMMARY

Claimant, Bruce R. Trabb, is liable for:

Initial Filing Fee	= \$ 250.00
Forum Fees	= \$ 5,300.00
Total Fees	= \$ 5,550.00
Less payments	= \$ 1,250.00
Balance Due NASD Dispute Resolution	= \$ 4,300.00

Respondent, J.P. Morgan Securities, Inc. f/k/a Banc One Capital Markets, Inc., is liable for:

Member Fees	= \$ 4,450.00
Adjournment Fee	= \$ 1,000.00
Forum Fees	= \$ 5,300.00
Total Fees	= \$ 10,750.00
Less payments	= \$ 4,450.00
Balance Due NASD Dispute Resolution	= \$ 6,300.00

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

ARBITRATION PANEL

Philip P. Rummel, Esq. - Public Arbitrator, Presiding Chair
Irving S. Capitel, Esq. - Public Arbitrator
Susan K. Franz - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

/s/ Philip P. Rummel, Esq.
Philip P. Rummel, Esq.
Public Arbitrator, Presiding Chair

November 10, 2006
Signature Date

/s/ Irving S. Capitel, Esq.
Irving S. Capitel, Esq.
Public Arbitrator

November 9, 2006
Signature Date

/s/ Susan K. Franz
Susan K. Franz
Non-Public Arbitrator

November 9, 2006
Signature Date

November 10, 2006
Date of Service (For NASD office use only)

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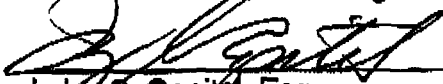
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Irving S. Capitel, Esq.
Public Arbitrator

Signature Date

11/9/06

Signature Date

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Non-Public Arbitrator

Signature Date

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Public Arbitrator

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11-09-2006

Signature Date

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