

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

McDonald Investments, Inc. (Claimant) vs. Daly Holdings, Inc. d/b/a/ Tower Hill Holdings, Event-Driven Value Inc., and Sean M. Daly (Respondents)

Case Number: 05-06562

Hearing Site: Cleveland, Ohio

Nature of the Dispute: Member vs. Customers

REPRESENTATION OF PARTIES

Claimant McDonald Investments, Inc., hereinafter referred to as "Claimant": Scott C. Matasar, Esq., Calfee, Halter & Griswold, LLP, Cleveland, OH.

Respondents Daly Holdings, Inc., d/b/a Tower Hill Holdings ("Daly Holdings") and Event-Driven Value, Inc., ("Event Driven") hereinafter referred to as "Respondents" appeared *pro se*. Previously represented by Todd M. Jacket, Esq., and Nicholas D. Satullo, Esq., Reminger & Reminger Co., L.P.A., Cleveland, OH.

Respondent Sean M. Daly hereinafter referred to as "Daly" appeared *pro se*.

CASE INFORMATION

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

Claimant signed the Uniform Submission Agreement on or about: December 21, 2005.

Joint Statement of Answer filed by Respondents on or about: February 27, 2006.

Daly Holdings signed the Uniform Submission Agreement on or about: February 24, 2006.

Event-Driven signed the Uniform Submission Agreement on or about: February 24, 2006.

Daly did not submit a Statement of Answer or signed Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract and estoppel. The causes of action relate to failure to pay for an order of 250,000.00 shares of Decker Outdoor Corporation Stock ("DECK").

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$1,013,272.56, pre- and post-judgment interest at the Ohio statutory rate, attorneys' fees, costs and other expenses incurred in the prosecution of this matter, including but not limited to expert witness and forum fees, and expenses.

Respondents requested dismissal of the Statement of Claim.

OTHER ISSUES CONSIDERED AND DECIDED

On or about September 8, 2006 the Panel heard oral arguments on Claimant's Motion for Leave to Amend its claim to add Sean Daly (sole officer, director and shareholder of Daly Holdings, Inc. and Event-Driven Value, Inc.) as an individual Respondent. After due deliberation, the Panel determined that Daly Holdings, Inc. and Event-Driven Value, Inc. were both the alter egos of Sean Daly and granted the Motion.

Upon review of the file and the representation made on behalf of Claimant, the undersigned arbitrators determined that Daly Holdings and Event Driven have been properly served with the Statement of Claim and received due notice of the hearing, and that the arbitration of the matter would proceed without said Respondents present.

On or about November 6, 2006, Daly submitted a request for an adjournment of the hearing dates. After due deliberation, the Panel denied the request. Daly did not appear at the hearing on November 8, 2006 and the Panel determined to proceed with the hearing.

The Claimant, the only party to have participated in this arbitration, 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 Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel finds in favor of Claimant against all Respondents jointly and severally upon Count I of the Statement of Claim, alleging breach of contract;
2. The Panel finds in favor of Claimant against all Respondents jointly and severally upon Count II of the Statement of Claim, alleging estoppel;
3. The Panel finds in favor of Claimant upon its claim asserted directly against Sean Daly in the Amended Statement of Claim that Sean Daly, Daly Holdings, Inc. and Event-Driven Value are jointly and severally liable for the Award made in favor of Claimant set

forth herein.

4. In this regard, the Panel specifically finds that Daly Holdings, Inc., and Event-Driven Value, Inc. are each and both the alter egos of Sean Daly.

5. The Panel further finds that Claimant is entitled to pierce the corporate veils of both Daly Holdings, Inc., and Event-Driven Value, Inc. In connection with this determination, the Panel makes the following specific findings of fact based upon the pleadings, testimony and evidence presented at the hearing, and upon the adverse inferences the Panel draws against Respondents as a sanction for failing to respond to Claimant's requests for documents and information, as set forth below:

a. Sean Daly has at all relevant times exercised control over Daly Holdings, Inc. and over Event-Driven Value, Inc., which was so complete that each corporation has no separate mind, will, or existence of its own;

b. Claimant has sustained unjust losses as a result of Sean Daly's control over Daly Holdings, Inc. and over Event-Driven Value, Inc.

6. Respondents are jointly and severally liable for and shall pay to Claimant compensatory damages in the amount of \$1,039,959.00 as calculated below:

- Trading losses \$1,013,272.00
- Purchase commissions \$12,500.00
- Sales commissions \$12,500.00
- Interest rate risk loss \$1,687.00

7. Respondents are jointly and severally liable for and shall pay to Claimant pre-judgment interest as calculated pursuant to the Ohio statutory rate in the amount of \$80,217.00.

8. Respondents are liable for and shall pay to Claimant post-judgment interest at the Ohio statutory rate from the date of this award until the Award is paid.

9. Any and all relief not specifically addressed herein is denied.

SUPPORT OF FINDINGS

The Panel cites the following testimony and the evidence presented at the hearing in support of the above findings:

1. At all relevant times, Daly Holdings, Inc., and Event-Driven Value, Inc., each possessed the same sole officer and director, to wit, Sean Daly;

2. At all relevant times, Daly Holdings, Inc., and Event-Driven Value, Inc., each possessed the same sole shareholder, to wit, Sean Daly;

3. Daly Holdings, Inc., was organized with and at all relevant times operated with an inadequate capital structure;

4. The property of Daly Holdings, Inc., to wit, corporate funds, have been used and diverted by Sean Daly for his own personal use;
5. Sean Daly has at all relevant times exercised operating control over Daly Holdings, Inc., for his own individual interest;
6. Daly Holdings, Inc. has failed to observe the formal requirements attributable to the operation of a corporation;
7. Respondents engaged in the commingling of assets, including, but not limited to, the transfer of large sums of money from the corporate bank accounts of Daly Holdings, Inc., to Sean Daly personally and to his wife, Carole Daly, with no legitimate corporate purpose thereof;
8. Daly Holdings, was a mere façade for the operations of the dominant share holder, Sean Daly.
9. Sean Daly engaged in conduct of failing to pay for trades transmitted by him, but purportedly made on behalf of Daly Holdings, Inc., and/or Event-Driven Value, Inc., in which Daly has failed to ensure payment for the trades when the stock price has not reacted in a manner that enabled Mr. Daly to complete the transaction at a profit. In this regard, the Panel specifically cites as evidence to support its finding;
 - The pleadings, motions, and exhibits thereto filed in connection with RBC Dain Rauscher's NASD arbitration, and subsequent federal litigation, against Daly Holdings, Inc., and Sean Daly arising out of Daly Holdings, Inc., and Sean Daly's failure to pay for the order Mr. Daly placed for shares of Zomax;
 - The pleadings, motions and exhibits thereto filed in connection with Ryan Beck & Co., Inc.'s federal litigation against Daly Holdings, Inc., Event-Driven Value, Inc., and Sean Daly arising out of defendants' failure to pay for the orders Mr. Daly placed in June 2006 for shares of Joseph A. Bank; and
 - The testimony provided at the arbitration hearing by the corporate representative of Ryan Beck & Co., Inc. regarding Mr. Daly's pattern of conduct, and representations made by Mr. Daly to Ryan Beck, in connection with his failure to ensure payment to Ryan Beck & Co., Inc. for the order he placed for shares of Joseph A. Bank.

In support of the Panel's findings above, the Panel further draws a number of negative inferences against Respondents as a sanction for their failure to fully and completely respond to Claimant's request for documents and information propounded upon Daly Holdings Inc., Event-Driven Value, Inc., and Sean Daly, all in violation of the Panel's decision granting Claimant's Motion to Compel, and pursuant to the Panel's authority to award Claimant this sanction pursuant to the section of the NASD Arbitrator's Manual entitled "*Arbitrators' Power to Issue Orders*".

Specifically, the Panel draws the following negative inferences against Respondents:

1. Event-Driven Value, Inc., was organized with, and at all relevant times operated with, an inadequate capital structure;
2. The property of Event-Driven Value, Inc., to wit, corporate funds, have been used and diverted by Sean Daly for his own personal use;
3. Sean Daly has at all relevant times, exercised operating control over Event-Driven Value, Inc., for his own individual interests;
4. Event-Driven Value, Inc., has failed to observe the formal requirements attributable to the operation of a corporation;
5. Respondents engaged in the commingling of assets, including, but not limited to, the transfer of large sums of money from the corporate bank accounts of Event-Driven Value, Inc., to Sean Daly personally and to his wife, Carole Daly, with no legitimate corporate purpose therefore;
6. Event-Driven Value, Inc., was a mere façade for the operations of the dominant shareholder, Sean Daly.

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	= \$ 2,000.00
--------------------------	---------------

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 event giving rise to the dispute. Accordingly, McDonald Investments, Inc., is a party.

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,000.00

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

Four (4) Pre-hearing sessions with Panel @ \$1,200.00/session	= \$ 4,800.00
Pre-hearing conferences:	
May 11, 2006	1 session
August 14, 2006	1 session
September 8, 2006	1 session
October 30, 2006	1 session

Three (3) Hearing sessions with Panel @ \$1,200.00/session	= \$ 3,600.00
Hearing Date: November 8, 2006 3 sessions	
Total Forum Fees	= \$ 8,400.00

1. The Panel has assessed \$2,400.00 of the forum fees to Claimant for the pre-hearing conferences held on May 11, August 14, September 8 and October 30, 2006.
2. The Panel has assessed \$2,400.00 of the forum fees jointly and severally to Respondents Daly Holdings and Event Driven for the pre-hearing conferences held on May 11, August 14, September 8 and October 30, 2006.
3. The Panel has assessed \$3,600.00 of the forum fees to Respondents Daly Holdings, Event Driven and Daly jointly and severally for the hearing held on November 8, 2006.

FEE SUMMARY

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 2,000.00
Member Fees	= \$ 8,550.00
Forum Fees	= \$ 2,400.00
Total Fees	= \$ 12,950.00
Less payments	= \$ 12,500.00
Balance Due NASD Dispute Resolution	= \$ 450.00
2. Respondents Daly Holdings and Event Driven are jointly and severally liable for:

Forum Fees	= \$ 2,400.00
Total Fees	= \$ 2,400.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 2,400.00
3. Respondents Daly Holdings, Event Driven, and Daly are jointly and severally liable for:

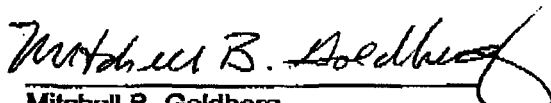
Forum Fees	= \$ 3,600.00
Total Fees	= \$ 3,600.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 3,600.00

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

ARBITRATION PANEL

Mitchell B. Goldberg, Esq.	-	Public Arbitrator, Presiding Chairperson
Kathleen P. Helbig-Hannan	-	Public Arbitrator
Harvey Michael Rosenberg	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Mitchell B. Goldberg
Public Arbitrator, Presiding Chairperson

December 6, 2006

Signature Date

Kathleen P. Helbig-Hannan
Public Arbitrator

Signature Date

Harvey Michael Rosenberg
Non-Public Arbitrator

Signature Date

December 8, 2006

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Mitchell B. Goldberg, Esq.	-	Public Arbitrator, Presiding Chairperson
Kathleen P. Helbig-Hannan	-	Public Arbitrator
Harvey Michael Rosenberg	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Mitchell B. Goldberg
Public Arbitrator, Presiding Chairperson

Signature Date

Kathleen P. Helbig-Hannan
Public Arbitrator

Signature Date



Harvey Michael Rosenberg
Non-Public Arbitrator

12/9/06

Signature Date

December 8, 2006

Date of Service (For NASD Dispute Resolution use only)


ARBITRATION PANEL

Mitchell B. Goldberg, Esq.	-	Public Arbitrator, Presiding Chairperson
Kathleen P. Helbig-Hannan	-	Public Arbitrator
Harvey Michael Rosenberg	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Mitchell B. Goldberg
Public Arbitrator, Presiding Chairperson

Signature Date



Kathleen P. Helbig-Hannan
Public Arbitrator

12/06/06

Signature Date

Harvey Michael Rosenberg
Non-Public Arbitrator

Signature Date

December 8, 2006

Date of Service (For NASD Dispute Resolution use only)