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

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In the Matter of the Arbitration Between:

Name of the Claimant  
First Montauk Securities Corp.

Case Number: 06-00286

Names of the Respondent  
Casey Burt

Hearing Site: Boca Raton, Florida

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Nature of the Dispute: Member vs. Associated Person.

**REPRESENTATION OF PARTIES**

For First Montauk Securities Corp., hereinafter referred to as "Claimant": Robert I. Rabinowitz, Esq.,  
First Montauk Securities Corp., Red Bank, New Jersey.

For Casey Burt, hereinafter referred to as "Respondent": Gary A. Klein, Esq., Klein & Sallah, LLC,  
Boca Raton, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: January 19, 2006.

Claimant signed the Uniform Submission Agreement: January 18, 2006.

Statement of Answer and Motion to Dismiss filed by Respondent on or about: May 2, 2006.

Respondent signed the Uniform Submission Agreement: October 10, 2006.

Response to Respondent's Motion to Dismiss filed by Claimant on or about: June 7, 2006.

Motion for Sanctions for Failure to Produce Documents filed by Respondent on or about: December 6, 2006.

Motion to Dismiss, for Attorneys' fees, and for Sanctions Based Upon Newly Discovered Information  
filed by Respondent on or about: December 6, 2006.

Motion to Strike Motion to Dismiss and for Sanctions [or, in the Alternative, Motion to Adjourn] filed by  
Claimant on or about: December 8, 2006.

Reply to Motion to Strike Motion to Dismiss and for Sanctions [or, in the Alternative, Motion to  
Adjourn] filed by Respondent on or about: December 8, 2006.

Motion to Dismiss Based on the Perry Mediation Settlement Agreement filed by Respondent on or  
about: December 11, 2006.

**CASE SUMMARY**

Claimant asserted that Respondent breached the fully-executed Independent Contractor Affiliates  
Agreement (the "Agreement") entered by the parties on August 9, 2001. The cause of action relates

to Respondent's alleged failure to indemnify or repay Claimant in connection with a separate arbitration that was settled by Claimant on behalf of both Claimant and Respondent.

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 following relief: (1) compensatory damages in the amount of \$138,512.53; (2) reimbursement of all filing, forum and member fees pursuant to the Agreement; (3) an award of attorneys' fees pursuant to the Agreement; and, (4) any further relief deemed just and equitable by the Panel.

Respondent requested the following relief: (1) dismissal of all claims asserted; (2) reimbursement of all fees and costs relating to this proceeding; and, (3) all other relief deemed just, proper and equitable by the Panel.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondent filed a motion to dismiss in which Respondent asserted, amongst other things, that there is no dispute as to the underlying facts in this matter. In its response, Claimant stated that a dismissal of the claim would deny Claimant its right to a full and fair hearing and would contravene the requirement of Rule 10303(a) of the NASD Code of Arbitration Procedure (the "Code"). On or about June 21, 2006, the Panel issued an Order denying Respondent's motion to dismiss.

On December 6, 2006, Respondent filed a motion for sanctions as well as a motion to dismiss and for sanctions, both of which were based upon Claimant's alleged failure to produce documents. Specifically, Respondent alleged that Claimant failed to provide a copy of a fully-executed mutual release that was previously entered by Claimant and Respondent. In lieu of a response to Respondent's motions, Claimant requested that the Panel either strike the motions as untimely and prejudicial, or adjourn the evidentiary hearings to allow Claimant with adequate time to prepare its response. In its reply, Respondent objected to the adjournment. On December 8, 2006, the Panel issued an Order denying the adjournment request, deferring judgment on the motions, and directing the parties to raise all outstanding issues with the Panel at the evidentiary hearing.

On December 11, 2006, Respondent filed an additional motion to dismiss in which Respondent asserted that, pursuant to a mediation settlement agreement entered by Claimant in a separate matter, Claimant gave up any claims it had against Respondent.

On December 12, 2006, at the outset of the evidentiary hearing, the Panel met in executive session to review all documents filed in connection with the outstanding motions filed on December 8 and December 11, 2006. Thereafter, the Panel heard oral argument from the parties on these motions. After oral argument, the Panel denied all of the motions.

On December 13, 2006, after the close of Claimant's case-in-chief, Respondent moved for summary judgment. After oral argument from the parties, the Panel denied Respondent's motion.

The parties have agreed that the Award in this matter may be entered in counterpart copies or that a signed handwritten Award may be entered.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondent is liable for breach of the Agreement and shall pay to Claimant the sum of \$100,000.00.

Any and all claims for relief not specifically addressed herein, including Claimant's request for attorneys' fees, 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

#### **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, Claimant is a party to this dispute and was a member of NASD at the time the following fees were assessed:

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$2,750.00</u>
Total Member Fees	= \$5,200.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were incurred in this matter.

#### **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:

No cancellation fees were assessed in this matter.

**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.

No injunctive relief fees were incurred during this proceeding.

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. 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:

Two (2) Pre-hearing sessions with the Panel @ \$1,125.00/session	= \$2,250.00
Pre-hearing conferences: May 10, 2006	1 session
June 21, 2006	1 session
Three (3) Hearing sessions with the Panel @ \$1,125.00/session	= \$3,375.00
Hearing Dates: December 12, 2006	2 sessions
December 13, 2006	1 session
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Total Forum Fees	= \$5,625.00

The Panel has assessed \$2,812.50 of the forum fees to Claimant.  
The Panel has assessed \$2,812.50 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.

No administrative costs were incurred during this proceeding.

**Fee Summary**

Claimant is solely liable for:	
Initial Filing Fee	= \$1,000.00
Member Fees	= \$5,200.00
Forum Fees	= \$2,812.50

Total Fees	= \$9,012.50
<u>Less payments</u>	<u>= \$7,325.00</u>
Balance Due NASD Dispute Resolution	= \$1,687.50

Respondent is solely liable for:

Forum Fees	= \$2,812.50
Total Fees	= \$2,812.50
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$2,812.50

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

**ARBITRATION PANEL**

Harry Dressler	-	Non-Public Arbitrator, Presiding Chairperson
Jerry A. Desiderio	-	Non-Public Arbitrator
Dennis J. Levin	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
Harry Dressler  
Non-Public Arbitrator, Presiding Chairperson

December 14, 2006  
Signature Date

/s/  
Jerry A. Desiderio  
Non-Public Arbitrator

December 14, 2006  
Signature Date

/s/  
Dennis J. Levin  
Non-Public Arbitrator

December 14, 2006  
Signature Date

December 15, 2006  
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution  
Arbitration No. 06-00286  
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Harry Dressler  
Non-Public Arbitrator, Presiding Chairperson

12/14/2006

Signature Date

Jerry A. Desiderio  
Non-Public Arbitrator

Signature Date

Dennis J. Levin  
Non-Public Arbitrator

Signature Date

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12/14/06  
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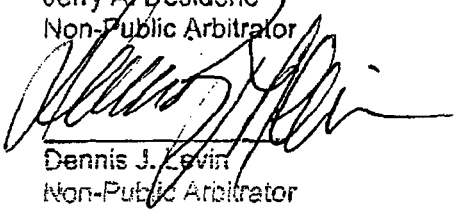
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