

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Michael Bergin, Robert Setteducati, Thomas Parigian, and Equity National Capital LLC (Claimants) v. National Securities Corporation (Respondent).

Case Number: 06-00588

Hearing Site: Newark, New Jersey

Nature of the Dispute: Associated Persons vs. Member

REPRESENTATION OF PARTIES

Claimants Michael Bergin ("Bergin"), Robert Setteducati ("Setteducati") Thomas Parigian ("Parigian"), and Equity National Capital LLC ("Equity National") hereinafter collectively referred to as "Claimants": Gary P. Barkett, Esq., Law Office of Gary P. Barkett, Little Rock, AR.

Respondent National Securities Corporation hereinafter referred to as "Respondent": Mark Roth, Esq., Golbeck Roth, PLLC, Seattle, WA.

CASE INFORMATION

Statement of Claim filed on or about: February 7, 2006.

Bergin signed the Uniform Submission Agreement: February 2, 2006.

Setteducati signed the Uniform Submission Agreement: February 2, 2006.

Parigian signed the Uniform Submission Agreement: February 2, 2006.

Equity National signed the Uniform Submission Agreement: February 2, 2006.

Statement of Answer filed by Respondent on or about: March 31, 2006.

National Securities did not sign the Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: breach of contract; unjust enrichment; and, estoppel.

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

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$474,335.00, interest, costs, and attorneys' fees.

Respondent requested that Claimants' Statement of Claim be dismissed in its entirety.

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 having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

On the third day of the hearings and during Respondent's case, Respondent advised the Panel and Claimants that the Profit and Loss figures which Respondent had furnished contemporaneously, in discovery and in the pre-hearing exchange were erroneous and that Respondent was not prepared at that time to provide accurate figures. Respondent therefore asked for a continuance and offered to reimburse Claimants' counsel's airfare for a return for further hearings and to pay other costs including an adjournment fee and to provide additional discovery on the corrected figures. Claimants opposed the application and the panel unanimously ruled that the proceedings would be bifurcated and the hearings were concluded and closing arguments made on liability. The parties also acknowledged that the allegedly inaccurate data did not impact on the 2.7% claim, but only the 50% net profits claim.

The Panel has determined to bifurcate the two components of Claimant's claims and issue an Award on the first component of the claim. Pursuant to the Panel's determination, case number 06-5318 was opened to resolve the second component of the claim. The same Panel of arbitrators assigned in this case will decide the second component of the claim in case 06-5318.

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.

PANEL DISCUSSION

The Claimants assert claims for breach of contract, unjust enrichment and promissory estoppel with respect to commissions and special compensation alleged to be due under a December 14, 2001 Agreement relating to Respondent's "HB office." The claims have two components: one for 2.7% of the gross monthly commissions of the HB office (because a 6.7% commission rate had been reduced to 4%) the other for 50% of the net profits of the HB office, exclusive of allocation of overhead cost. The Respondent claims that overhead costs are to be allocated and included in the calculation of the net profits and that there are therefore no profits to be divided.

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. With respect to the first component of this claim, Respondent is liable for and shall pay to Claimants \$161,167.21 as compensatory damages plus interest at the rate of 6% per annum accruing from July 15, 2005 to the date of payment of the Award. Payment on the first component of the Award shall not be deferred by reason of the need to finally determine damages under the 50% net profits claim discussed below.
2. Any and all relief not specifically addressed herein, including punitive damages, 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	= \$ 300.00
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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 that employed the associated persons at the time of the event giving rise to the dispute. Accordingly, National Securities Corporation, is a party

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

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:

One (1) Pre-hearing session with Panel @ \$1,125.00	= \$ 1,125.00
Pre-hearing conference: June 20, 2006	1 session
Six (6) Hearing sessions with Panel @ \$1,125.00	= \$ 6,750.00

Hearing Dates:	November 1, 2006	2 sessions
	November 2, 2006	2 sessions
	November 3, 2006	2 sessions
<hr/> Total Forum Fees		= \$ 7,875.00

1. The Panel has assessed \$7,875.00 of the forum fees against the Respondent.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Total Fees	= \$ 300.00
Less payments	= \$ 300.00
Balance due NASD Dispute Resolution	= \$ 0.00

2. Respondent National Securities Corporation is solely liable for:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 7,875.00
Total Fees	= \$13,075.00
Less payments	= \$ 5,950.00
Balance due NASD Dispute Resolution	= \$ 7,125.00

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

ARBITRATION PANEL

Chris Naum	-	Non-Public Arbitrator, Presiding Chair
Brian Carlis, Esq.	-	Non-Public Arbitrator
Michael Shannon, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Chris Naum
Public Arbitrator, Presiding Chairperson

12/7/06
Signature Date

Brian Carlis, Esq.
Public Arbitrator

Signature Date

Michael Shannon, Esq.
Non-Public Arbitrator

Signature Date

December 11, 2006
Date of Service (For NASD Dispute Resolution use only)


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