

97/2076

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Thomas F. McKiernan

96-04406

Name of Respondent

Armata Partners, L.P.

REPRESENTATION

For Claimant Thomas F. McKiernan ("Claimant") appeared Donald D. Brown, Jr., Esq., of Spiegel, Brown, and Fichera located in Poughkeepsie, New York.

For Respondent Armata Partners, L.P. ("Respondent") appeared Keara M. O'Donnell, Esq., of Piper and Marbury, L.L.P. located in Washington, D.C..

CASE INFORMATION

The Statement of Claim was filed on October 14, 1996.

Claimant's Submission Agreement was signed on September 30, 1996.

The Statement of Answer was filed by Respondent on December 06, 1996.

Respondent Submission Agreement was signed on December 06, 1996.

HEARING INFORMATION

Pre-Hearing Conference:	May 04, 1997	One Session
Hearing Dates/Sessions:	June 09, 1997	Two Sessions
	June 16, 1997	One Session

The hearings were conducted at the offices of NASD Regulation, Inc. located in New York.

CASE SUMMARY

Claimant alleged that he was approached by a business associate Frederic T. Spindel, the attorney for an emerging growth company Digex. Spindel sought Claimant's assistance in placing the company with an investment banking firm. Claimant alleged that he first consulted the investment banking department at Alex Brown and Sons, Inc., where he was employed, and was told the company did not want the deal.

9717 10

Claimant alleged that he then sought out other firms that may be interested in Digex, including Respondent.

Claimant alleged that in May 1994 Claimant, Spindel, and George Rich (a partner in Respondent) met at a conference in which Claimant made referrals to Respondent about emerging companies, including Digex. Claimant alleged that at this meeting Respondent promised to pay Claimant a finder's or referral fee for the Digex referral and any other similar business introductions. Claimant alleged that Respondent specifically stated that his fee would be "ten and ten", meaning he would be paid 10% of Respondent's placement fee, as well as 10% on any stock warrants received by Respondent as part of the deal.

Claimant alleged that he felt it was unnecessary to ask Respondent to put in writing that they would pay a finder's fee since it was customary in the industry to receive a fee for introducing companies to an investment banking business, such as referring Digex to Respondent. Claimant alleged that in late May 1994 he recommended to Spindel that Digex take their investment banking business to Respondent and then advised Respondent of his recommendation. In June 1994 Claimant entered into a compensation agreement with Digex for his services in placing them with an investment bank. Claimant stated that they compensation from Digex was 0.25% of the total capital raised and common stock warrants to purchase shares up to 1% of the capital raised.

Claimant stated that when Respondent entered into its Engagement Agreement with Digex, he assumed that he would be paid a finder's fee by the Respondent. Claimant stated that in expectation of this he submitted to Alex Brown and Sons, Inc. a "Request for Approval of Outside Business Affiliation, Employment, or Compensation" which was required by the firm for any employee who wanted to receive compensation from an outside concern. Claimant alleged that at the closing of the deal between Digex and Respondent he wrote to Respondent with instructions on how the cash portion of his fee should be handled. Claimant alleged that Respondent replied to this letter stating that they had no recollection of entering into a compensation agreement. Claimant stated that the Digex closing with the Respondent concluded in March 1995 for \$4,000,000.00.

Respondent maintained that they did not enter into any agreement with the Claimant regarding a finder's fee. Respondent maintained that Claimant worked as an advocate for Digex, not for themselves and that a finder's fee is paid when you are an advocate for the investment banking firm. Respondent maintained that due to this fact they do not have to pay Claimant a finder's fee. Respondent maintained that Claimant had a written agreement with Digex which included 1) 0.25% of the total amount of capital raised, 2) warrants to purchase common shares up to 1% of the capital raised, 3) an engagement fee of \$2,500.00 and 4) reimbursement of out-of-pocket expenses.

Respondent maintained that Claimant did meet with George Rich (a partner in Respondent) at a conference, but that Digex was not discussed and no finder's fee was promised. Respondent maintained that after the conference Spindel suggested that Claimant approach Respondent about Digex. Respondent maintained that due to the difficulty with paying finder's fees to brokers from other companies Claimant was told to seek compensation from Digex - which he did. Respondent maintained that at the closing of the deal with Digex they were informed that Digex would be reimbursing Claimant. Respondent maintained that it would be extremely unusual for the broker to be compensated by both parties.

Respondent offered the following defenses: 1) Claimant fails to state a claim upon which relief can be granted, 2) there is no agreement to arbitrate and thus the claim is not eligible for arbitration, 3) Claimant is barred by the doctrine of unclean hands, 4) Claimant's claim is barred by the doctrine of estoppel, and 5) Claimant's claim is barred by the doctrine of waiver.

RELIEF REQUESTED

Claimant requested a sum of \$20,000.00 and warrants on 20,000 shares of Digex common stock at the same price and under the same terms as those received by Armata at the closing of the Digex private placement. Claimant also requested costs and attorney fees.

Respondent requested that the Statement of Claim be dismissed with prejudice.

OTHER ISSUES CONSIDERED & DECIDED

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. In either case, the parties have agreed to receive conformed copies of the Award while the original(s) remain on file with the NASD.

AWARD

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

1. All claims asserted by Thomas McKiernan against Armata Partners are dismissed in their entirety;

2. The parties shall bear their respective costs, including attorneys' fees; and,

~~Respondent with its attorneys' fees and costs of litigation.~~
~~All other requests for relief are denied.~~

FORUM FEES

Pursuant to Rule 10332 of the NASD Regulation, Inc. Code of Arbitration Procedure, the arbitrator(s) have determined that NASD Regulation, Inc. will retain the \$500 non-refundable filing fee previously paid by the Claimant and have assessed the following Forum Fees:

1 Pre-Hearing Session x \$300.00	=	\$ 300.00
3 Hearing Sessions x \$300.00	=	\$ <u>900.00</u>
Total Forum Fees	=	\$ 1,200.00

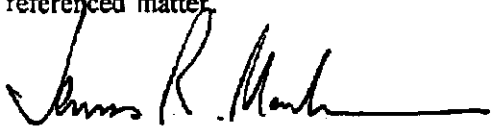
1. Claimant is assessed \$600.00 representing one-half of the forum fees, less \$300.00 previously paid, leaving \$300.00 due.
2. Respondent is assessed \$600.00 representing one-half of the forum fees due.

Fees are payable to the National Association of Securities Dealers, Inc.

9712010

ARBITRATOR'S SIGNATURE

I, James R. Madan, do hereby affirm, pursuant to Article 7507 of the Civil Practice Laws and Rules, that I am the individual described herein, and who executed this instrument which is my decision in the above-referenced matter.



James R. Madan
Industry Chairperson

Date of Decision: December 15, 1997

FORUM PRESS
[Faint, mostly illegible text follows, appearing to be a newspaper clipping or a document with bleed-through from the reverse side.]