

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

George Belme

and

98-00414

Name of Respondent

Kessler & Company Investments
Robert Kessler

REPRESENTATION OF PARTIES

George Belme ("**Claimant**") was represented by Otto K. Hilbert, II, Esq., Reinhart, Boerner, Van Deuren, Norris & Rieselbach, P.C., Denver, Colorado.

Kessler & Company Investments ("**Respondent Kessler & Company**") and Robert Kessler ("**Respondent Kessler**") (collectively as "**Respondents**") were represented by Brent T. Johnson, Esq., Fairfield and Woods, P.C., Denver, Colorado.

CASE INFORMATION

The Statement of Claim was filed on or about February 3, 1998. Reply to respondent Kessler & Company's Counterclaim was filed on or about April 13, 1998. Submission Agreement of Claimant George Belme was signed on January 20, 1997.

Statement of Answer and Counterclaim was filed by Respondents Kessler & Company Investments and Robert Kessler on or about February 24, 1998. Submission Agreement of Respondent Kessler & Company Investments was signed on February 18, 1998 by Maxine A. Johnson.

HEARING INFORMATION

The hearing was held on Tuesday, September 15, 1998 for two (2) sessions in Denver, Colorado.

CASE SUMMARY

Claimant alleged that Respondents deceived him by failing to pay him the amounts contracted and promised to pay. Specifically, Claimant alleged that the terms of his employment agreement included among other things, a 50% split of the profits earned by Claimant's department. In addition, Claimant alleged that Respondents failed to compensate him for personal pension plan contributions made after Claimant left the employ of Kessler & Company and assigned expenses to Claimant which he never agreed to pay or be responsible for. Claimant denied the allegation set forth in the Counterclaim.

Respondent denied the allegations set forth in the Statement of Claim. Respondents specifically stated that Claimant total compensation would equal one-half of the net profit of the equity department and that Claimant would be paid a draw subject to adjustment at year end and in the amount of one-half of any profit or loss in the equity department. Respondents further stated that on June 17, 1997, Claimant signed off on an adjusted profit and loss statement for the period from May, 1996 through April, 1997, specifically agreeing to a net loss in the amount of \$4,341.91 for that period of time. Respondents stated that the net loss took into account the pension contributions and build out expenses complained of.

In the Counterclaim, Respondent Kessler & Company alleged that it entered into long term agreements for services and equipment to support the equity department for which it continues to incur expenses without obtaining any significant benefit. In addition, Respondent Kessler & Company alleged that Claimant took with him certain clients of the firm in violation of the terms of the employment agreement.

RELIEF REQUESTED

Claimant requested an award of actual damages in the amount of \$28,711.94, unspecified exemplary damages arising out of Respondents' fraudulent conduct, statutory interest, costs, and expenses, including attorneys' fees.

Respondents requested that the claims asserted against them be denied and that if any amount were found to be owing to Claimant, that it should be an offset for amounts owing under the counterclaim. In the Counterclaim, Respondent Kessler & Company requested an award in the amount of \$50,000.00, interest and costs.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Robert Kessler did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10201 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim,

appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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 Regulation, Inc. Office of Dispute Resolution.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Kessler & Company Investments and Robert Kessler shall be and hereby are jointly and severally liable for and shall pay to the Claimant George Belme the sum of \$5,000.00.
2. Interest at the rate of 8% per annum is award on the above stated sum from and inclusive of May 1, 1996 to and inclusive of the date this award is paid in full.
3. At the commencement of the hearing the parties advised the arbitration panel that they had reached a resolution of the claims regarding the pension plan contributions. Therefore, the undersigned arbitrators did not consider those claims. All remaining claims asserted in the Counterclaim shall be and hereby are denied in their entirety.
4. Each party shall bear its own costs, expenses and fees, including attorneys' fees, incurred in this matter not specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$600.00 per hearing session and \$300 for each pre-hearing conference, if any. There were two (2) sessions x \$600.00 = \$1,200.00 in forum fees. Pursuant to Rule 10205(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Rule 10205(c) of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$500 and shall **retain** as forum fees the hearing session deposit in the amount of \$600.00 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant George Belme.

Pursuant to Rule 10205(c) of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$500 and shall **retain** as forum fees the hearing session deposit in the amount of \$600.00 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Respondent and Counterclaimant Kessler & Company Investments.

Pursuant to Rule 10333 of the Code, Respondent Kessler & Company Investments has paid to the NASD the member surcharge in the amount of \$600.00 previously invoiced.

Pursuant to Rule 10333 of the Code, Respondent Kessler & Company Investments shall pay to the NASD the past due process fees in the total amount of \$600.00 previously invoiced. **Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.**

/s/ Gerald W. Wischmeyer
Gerald W. Wischmeyer, Esq.
Industry Arbitrator, Presiding Chair

Dated: September 28, 1998

/s/ Steven M. Feder
Steven M. Feder, Esq.
Industry Arbitrator

September 28, 1998

/s/ Alexander N. Feick
Alexander N. Feick
Industry Arbitrator

September 28, 1998