
Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Roney & Co.,
Claimant,

Vs.

Sabrina M. Silders (O'Malley),
Respondent,

Vs.

Peter W. Powers,
Third-Party Respondent.

Case Number: 99-02189

Hearing Site: Cleveland, Ohio

REPRESENTATION OF PARTIES

Claimant Roney & Co. ("Roney") was represented by Jason S. Conti, Esquire, of Honigman, Miller, Schwartz and Cohn, LLP, Detroit, Michigan.

Respondent/Third-Party Claimant Sabrina M. Silders (O'Malley) ("Silders") was not represented by counsel and did not appear at the hearing. At the time she filed her Statement of Answer and Third-Party Claim, Silders was represented by James J. Bartolozzi, Esquire, and Howard G. Strain, Esquire, of Kahn, Kleinman, Yanowitz & Arnson Co., L.P.A., Cleveland, Ohio. This firm withdrew from the representation of Silders on or about March 27, 2001.

Third-Party Respondent Peter W. Powers ("Powers") was represented by James W. Reardon, Esquire, of Svete, McGee & Carribine Co., L.P.A., Chardon, Ohio.

CASE INFORMATION

The Statement of Claim was filed on or about May 12, 1999.

Gary D. Wachs, Director of Compliance for Roney, signed the Uniform Submission Agreement on May 10, 1999.

Silders' Statement of Answer and Third-Party Claim against Powers was filed on or about July 29, 1999.

Silders signed the Uniform Submission Agreement on July 22, 1999.

Powers' Statement of Answer to Third-Party Claim was filed on or about December 14, 1999. Powers did not file a signed Uniform Submission Agreement.

Roney filed an Amended Statement of Claim against Silders and Powers on or about March 27, 2001.

Powers filed his Answer to Amended Statement of Claim on or about August 24, 2001.

CASE SUMMARY

Claimant Roney asserted a cause of action for breach of employment agreement and promissory note.

In her Statement of Answer and Third-Party Claim, Silders (whose full name at the date of filing had been changed to Sabrina Marie O'Malley) denied the allegations contained in the Statement of Claim and asserted claims against Powers for false representations and fraud.

Unless specifically admitted in his Statement of Answer to Third-Party Claim, Powers denied the allegations set forth therein and asserted the following affirmative defenses: failure to state a claim upon which relief can be granted, lack of subject matter jurisdiction, failure of consideration and/or lack of privity.

In its Amended Statement of Claim, Roney reasserted its claim against Silders and asserted the following causes of action against Silders and Powers: breach of settlement agreement, promissory estoppel and unjust enrichment.

Except as specifically admitted in his Statement of Answer to Amended Statement of Claim, Powers denied the allegations set forth therein.

RELIEF REQUESTED

It its Statement of Claim, Roney requested:

Compensatory Damages	\$266,625.00
Interest	not specified
Attorneys' Fees	not specified
Other Costs	not specified

In her Third-Party Claim, Silders requested:

Compensatory Damages	\$295,819.00
Interest	not specified
Attorneys' Fees	not specified
Other Costs	not specified

It its Amended Statement of Claim, Roney reasserted its initial relief requests and requested, alternatively, an award of monetary damages equal to the amount allegedly agreed upon by the parties in a settlement agreement.

OTHER ISSUES CONSIDERED AND DECIDED

Powers did not file with NASD Dispute Resolution, Inc., a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code"), and, having filed an answer to the Third-Party Claim and the Amended Statement of Claim, and having attended the hearing and presented a defense, is bound by the determination of the Panel on all issues submitted.

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned Panel determined that Silders was properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without Silders present, in accordance with the Code.

On or about March 27, 2001, Roney filed a Motion to Amend the Statement of Claim. No responses to the motion were received. On or about June 7, 2001, the undersigned Panel granted the Motion.

On or about October 16, 2001, Roney filed a Motion to Compel and for Sanctions against Silders. No responses to the motion were received. On or about January 10, 2002, the undersigned Panel ordered Silders to produce certain documents, adding that the failure to do so could result in the imposition of one or more sanctions, including: preclusion of the use of documents at the hearing and the entry of an order barring Silders from presenting a defense at the hearing.

At the hearing, Roney withdrew its claims regarding breach of settlement agreement as against Powers. Additionally, Roney amended its relief requests to include a request for an award against Powers for a sum equal to half of any amount awarded by the Panel to Roney and against Silders.

AWARD

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

1. Respondent Sabrina M. O'Malley, nee Silders, is solely liable for, and shall pay to Claimant Roney & Co., damages in the amount of \$332,071.00 (Three Hundred Thirty-two Thousand, Seventy-one Dollars and No Cents).
2. Respondent Sabrina M. O'Malley, nee Silders, is solely liable for, and shall pay to Claimant Roney & Co., interest on the sum awarded in paragraph 1 above at the rate of the prevailing daily prime rate of Roney's primary bank on or after January 15, 2002. The interest shall accrue from January 15, 2002, until the date of payment of the award.

3. All claims asserted against Respondent/Third-Party Respondent Peter W. Powers by Claimant Roney & Co., and by Third-Party Claimant Sabrina M. O'Malley, nee Silders, are dismissed with prejudice.
4. Unless specified otherwise herein, parties are to bear their own fees and costs.
5. Any and all other relief not addressed herein is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc., will collect or retain the following non-refundable filing fees:

Initial claim filing fee	= \$ 1,000.00
Third-Party claim filing fee	= \$ 300.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

Adjournment Fees

Adjournments requested during these proceedings:

November 7-9, 2000, requested by Roney = \$1,125.00*

*The panel waived the fee for this adjournment.

Forum Fees and Assessments

The Panel has the authority to assess forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with the Panel x \$1,125 = \$2,250.00

Pre-hearing conferences:	April 13, 2000	1 session
	August 3, 2001	1 session

One (1) Hearing session x \$1,125 = \$1,125.00

Hearing Date	January 16, 2002	1 session
--------------	------------------	-----------

Total Forum Fees = \$3,375.00

The Panel has assessed the forum fees incurred in this arbitration as follows: one third (\$1,125.00) to Roney, one third (\$1,125.00) to Silders and one third (\$1,125.00) to Powers.

FEE SUMMARY

Claimant Roney is solely liable for:

Initial Filing Fee	= \$1,000.00
Forum Fees	= \$1,125.00
Member Fees	= \$4,600.00
Total Fees	= \$6,725.00
<u>Less payments</u>	<u>= \$7,125.00</u>
Refund Paid by NASD Dispute Resolution, Inc.	= \$ 400.00

Respondent/Third-Party Claimant Silders is solely liable for:

Third-Party Claim filing fee	= \$ 300.00
<u>Forum fees</u>	<u>= \$1,125.00</u>
Total Fees	= \$1,425.00
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due to NASD Dispute Resolution, Inc.	= \$ 0.00

Third-Party Respondent Powers is solely liable for:

<u>Forum fees</u>	<u>= \$1,125.00</u>
Total Fees	= \$1,125.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due to NASD Dispute Resolution, Inc.	= \$1,125.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

<i>Roger W. Van Deusen, Esq.</i>	-	<i>Public Arbitrator, Chairperson</i>
<i>Scott M. Shubert</i>	-	<i>Public Arbitrator</i>
<i>Donald W. Rioux</i>	-	<i>Non-Public Arbitrator</i>

Roger W. Van Deusen
Roger W. Van Deusen, Esq.
Chairperson

February 14, 2002
Signature Date

Scott M. Shubert
Scott M. Shubert
Public Arbitrator

February 15, 2002
Signature Date

Donald W. Rioux
Donald W. Rioux
Non-Public Arbitrator

February 19, 2002
Signature Date

February 20, 2002
Date of Service

NASD Dispute Resolution, Inc.
Arbitration Case #: 99-02189
Page 5 of 5

FEE SUMMARY

Claimant Roney is solely liable for:

Initial Filing Fee	= \$1,000.00
Forum Fees	= \$1,125.00
Member Fees	= \$4,600.00
Total Fees	= \$6,725.00
Less payments	= \$7,125.00
Refund Paid by NASD Dispute Resolution, Inc.	= \$ 400.00

Respondent Third-Party Claimant Silders is solely liable for:

Third-Party Claim filing fee	= \$ 300.00
Forum fees	= \$1,125.00
Total Fees	= \$1,425.00
Less payments	= \$1,425.00
Balance Due to NASD Dispute Resolution, Inc.	= \$ 0.00

Third-Party Respondent Powers is solely liable for:

Forum fees	= \$1,125.00
Total Fees	= \$1,125.00
Less payments	= \$ 0.00
Balance Due to NASD Dispute Resolution, Inc.	= \$1,125.00


All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Roger W. Van Deusen, Esq.
Scott M. Shubert
Donald W. Rioux

-
-
-

Public Arbitrator, Chairperson
Public Arbitrator
Non-Public Arbitrator


Roger W. Van Deusen, Esq.,
Chairperson

February 14, 2002
Signature Date

Scott M. Shubert
Public Arbitrator

Signature Date

Donald W. Rioux
Non-Public Arbitrator

Signature Date

Date of Service (For NASD-Dispute Resolution office use only)

NASD Dispute Resolution, Inc.
 Arbitration Case #: 99-02189
 Page 5 of 5

FEE SUMMARY

Claimant Roney is solely liable for:

Initial Filing Fee	= \$1,000.00
Forum Fees	= \$1,125.00
<u>Member Fees</u>	<u>= \$4,600.00</u>
Total Fees	= \$6,725.00
<u>Less payments</u>	<u>= \$7,125.00</u>
Refund Paid by NASD Dispute Resolution, Inc.	= \$ 400.00

Respondent/Third-Party Claimant Silders is solely liable for:

Third-Party Claim filing fee	= \$ 300.00
<u>Forum fees</u>	<u>= \$1,125.00</u>
Total Fees	= \$1,425.00
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due to NASD Dispute Resolution, Inc.	= \$ 0.00

Third-Party Respondent Powers is solely liable for:

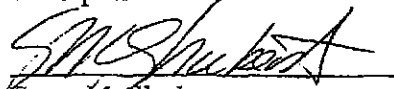
<u>Forum fees</u>	<u>= \$1,125.00</u>
Total Fees	= \$1,125.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due to NASD Dispute Resolution, Inc.	= \$1,125.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Roger W. Van Deusen, Esq.	-	Public Arbitrator, Chairperson
Scott M. Shubert	-	Public Arbitrator
Donald W. Rioux	-	Non-Public Arbitrator

Roger W. Van Deusen, Esq.,
 Chairperson


 Scott M. Shubert
 Public Arbitrator

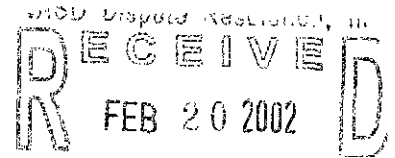
Signature Date


 Signature Date

Donald W. Rioux
 Non-Public Arbitrator

Signature Date

Date of Service (For NASD-Dispute Resolution office use only)



FEE SUMMARY

Claimant Roney is solely liable for:

Initial Filing Fee	= \$1,000.00
Forum Fees	= \$1,125.00
Member Fees	= \$4,600.00
Total Fees	= \$6,725.00
Less payments	= \$7,125.00
Refund Paid by NASD Dispute Resolution, Inc.	= \$ 400.00

Respondent/Third-Party Claimant Silders is solely liable for:

Third-Party Claim filing fee	= \$ 300.00
Forum fees	= \$1,125.00
Total Fees	= \$1,425.00
Less payments	= \$1,425.00
Balance Due to NASD Dispute Resolution, Inc.	= \$ 0.00

Third-Party Respondent Powers is solely liable for:

Forum fees	= \$1,125.00
Total Fees	= \$1,125.00
Less payments	= \$ 0.00
Balance Due to NASD Dispute Resolution, Inc.	= \$1,125.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Roger W. Van Deusen, Esq.	-	Public Arbitrator, Chairperson
Scott M. Shubert	-	Public Arbitrator
Donald W. Rioux	-	Non-Public Arbitrator

Roger W. Van Deusen, Esq..
Chairperson

Signature Date

Scott M. Shubert
Public Arbitrator

Signature Date

Donald W. Rioux
Non-Public Arbitrator

2-19-02
Signature Date

Date of Service (For NASD-Dispute Resolution office use only)