

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

Marc Marcou, Brent McTaggart, Matthew Chin, Frank Marasco, Sam Escodero, John Ryan, Gabriel D. Simon, Terrance Wood, and Shahid Malik (Claimants) vs. Patterson Travis, Inc., Judah Wernick, Stephen M. McNeely, David Travis, and Patterson Travis Operating Account, Inc. (Respondents)

Case Number: 99-02778

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimants, Marc Marcou ("Marcou"), Brent McTaggart ("McTaggart"), Matthew Chin ("Chin"), Frank Marasco ("Marasco"), Sam Escodero ("Escodero"), John Ryan ("Ryan"), Gabriel D. Simon ("Simon"), Terrance Wood ("Wood"), and Shahid Malik ("Malik"), hereinafter collectively referred to as "Claimants": Robert J. Tolchin, Esq., Jaroslawicz & Jaros, New York, NY.

Respondent, Patterson Travis, Inc. ("Patterson"): Calvin J. Domenico, Jr., Esq., a sole practitioner, Englewood, CO. Patterson originally appeared *pro se*.

Respondent, Patterson Travis Operating Account, Inc. ("PT Operating"): Judah Wernick, Patterson Travis, Inc., Woodmere, NY.

Respondents, Judah Wernick ("Wernick"), David Travis ("Travis"), and Stephen M. McNeely ("McNeely"), appeared *pro se*.

**CASE INFORMATION**

Statement of Claim filed on or about: June 17, 1999.

Amended Statement of Claim filed on or about: July 6, 1999.

Marcou signed the Uniform Submission Agreement.

McTaggart signed the Uniform Submission Agreement.

Chin signed the Uniform Submission Agreement.

Marasco signed the Uniform Submission Agreement.

Escodero signed the Uniform Submission Agreement.

Simon signed the Uniform Submission Agreement.

Ryan signed the Uniform Submission Agreement.

Wood signed the Uniform Submission Agreement.

Malik signed the Uniform Submission Agreement.

Statement of Answer filed by Patterson, PT Operating, Wernick, and Travis on or about: December 7, 1999.

Patterson did not sign the Uniform Submission Agreement.

PT Operating did not sign the Uniform Submission Agreement.

Wernick did not sign the Uniform Submission Agreement.

Travis did not sign the Uniform Submission Agreement.

Statement of Answer filed by McNeely on or about: October 26, 1999.

McNeely did not sign the Uniform Submission Agreement.

### **CASE SUMMARY**

Claimants asserted the following cause of action: failure to pay commissions owed to Claimants.

Unless specifically admitted in their Answer, Patterson, PT Operating, Wernick, and Travis denied the allegations made in the Statement of Claim and asserted the following defenses: Claimants failed to state a cause of action upon which relief may be granted; Claimants had knowledge and assumed the risks in entering the orders in question; to the extent Claimants have been damaged, such damages resulted wholly or partially from Claimants' own negligence and/or recklessness; to the extent Claimants have been damaged, if at all, Claimants failed to discharge their duties to mitigate damages; Patterson at all times acted in good faith, without knowledge of wrongdoing, and did not directly or indirectly induce any act or acts constituting any purported violation or purported claim alleged in the Statement of Claim; Claimant is estopped from recovering any losses due to unclean hands; and there is no jurisdiction as to PT Operating, Travis, or Wernick based on the facts and the allegations contained in the Statement of Claim.

In their Counterclaim, Patterson, PT Operating, Wernick, and Travis asserted the following causes of action: violations of the express provisions in Claimants' U-4 Forms and violations of Patterson's internal policies, procedures, rules, and regulations.

### **RELIEF REQUESTED**

Claimants requested an Award of all commissions owed them, less \$50.00 for each cancelled trade of inventory stock, plus 25% premium pursuant to New York Labor Law section 198(1-a), plus interest and the costs of this proceeding, plus 33% as attorneys' fees. Claimants estimated their total damages to be between \$50,000.00 and \$100,000.00.

In their Answer and Counterclaim, Patterson, PT Operating, Wernick, and Travis requested damages in the amount of \$9,000.00 for violations of the provisions of Claimants' U-4 Forms, and unspecified damages for violations of Patterson's internal policies, procedures, rules, and regulations.

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

Upon review of the file and the representations made on behalf of the Claimants, the undersigned arbitrators (the "Panel") determined that Wernick has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Patterson, PT Operating, Wernick, and Travis did not file with NASD Dispute Resolution, Inc. properly executed submissions to arbitration but are required to submit to arbitration pursuant to the Code and, having answered the claim, are bound by the determination of the Panel on all issues submitted.

Prior to the hearings in this matter, Claimants dismissed McNeely as a Respondent.

Respondents Patterson, PT Operating, Wernick, and Travis made a motion to strike the part of Claimants' Statement of Claim requesting benefits under Article 6 of the New York Labor Law, and dismiss Respondents PT Operating, Wernick, and Travis for lack of subject matter jurisdiction. The Panel denied these motions without prejudice.

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.

### **AWARD**

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

1. Patterson, PT Operating, Wernick, and Travis be and hereby are jointly and severally liable for and shall pay to Marcou the sum of \$11,749.41 as compensatory damages.
2. Patterson, PT Operating, Wernick, and Travis be and hereby are jointly and severally liable for and shall pay to McTaggart the sum of \$4,773.78 as compensatory damages.

3. Patterson, PT Operating, Wernick, and Travis be and hereby are jointly and severally liable for and shall pay to Chin the sum of \$1,450.18 as compensatory damages.
4. Patterson, PT Operating, Wernick, and Travis be and hereby are jointly and severally liable for and shall pay to Marasco the sum of \$2,839.13 as compensatory damages.
5. Patterson, PT Operating, Wernick, and Travis be and hereby are jointly and severally liable for and shall pay to Ryan the sum of \$1,032.45 as compensatory damages.
6. Patterson, PT Operating, Wernick, and Travis be and hereby are jointly and severally liable for and shall pay to Simon the sum of \$3,843.76 as compensatory damages.
7. Patterson, PT Operating, Wernick, and Travis be and hereby are jointly and severally liable for and shall pay to Wood the sum of \$3,271.42 as compensatory damages.
8. Patterson, PT Operating, Wernick, and Travis be and hereby are jointly and severally liable for and shall pay to Malik the sum of \$9,001.04 as compensatory damages.
9. Patterson, PT Operating, Wernick, and Travis be and hereby are jointly and severally liable for and shall pay to Escodero the sum of \$4,110.11 as compensatory damages.
10. Patterson, PT Operating, Wernick, and Travis be and hereby are jointly and severally liable for and shall pay to Claimants the sum of \$14,023.76 as attorneys' fees, pursuant to Article 6, Section 198(1-a) of New York Labor Law.
11. Patterson, PT Operating, Wernick, and Travis be and hereby are jointly and severally liable for and shall pay to Claimants the sum of \$10,517.82, representing 25% of the wages awarded under Section 198(1-a) of New York Labor Law, to be allocated proportionally to each Claimant.
12. The Counterclaim asserted by Patterson, PT Operating, Wernick, and Travis is hereby denied in its entirety.
13. All other requests for relief are hereby denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$ 225.00
Counterclaim filing fee	= \$ 500.00

#### **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. In this matter, Patterson Travis, Inc. is a party.

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,500.00

#### **Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing 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 Panel x \$750.00	= \$1,500.00
Pre-hearing conferences:	
May 22, 2000	1 session
June 1, 2000	1 session
Three (3) Hearing sessions x \$750.00	= \$2,250.00
Hearing Dates:	
September 21, 2000	1 session
September 26, 2000	2 sessions
Total Forum Fees	= \$3,750.00

1. The Panel has assessed \$1,875.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$1,875.00 of the forum fees jointly and severally against Patterson, PT Operating, Wernick, and Travis.

**Fee Summary**

1. Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	= \$1,875.00
Total Fees	= \$2,100.00
<u>Less payments</u>	= \$ 975.00
Balance Due NASD Dispute Resolution, Inc.	= \$1,125.00

2. Patterson be and hereby is solely liable for:

<u>Member Fees</u>	= \$3,100.00
Total Fees	= \$3,100.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$3,100.00

3. Patterson, PT Operating, Wernick, and Travis be and hereby are jointly and severally liable for:

Counterclaim Filing Fee	= \$ 500.00
<u>Forum Fees</u>	= \$1,875.00
Total Fees	= \$2,375.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$2,375.00

All balances are due and payable to NASD Dispute Resolution, Inc.

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Andrew Mitchell Rich, CFP  
Industry Arbitrator, Presiding Chair

12/11/00  
Signature Date

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Douglas C. Evans  
Industry Arbitrator

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Signature Date

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Steven M. Hecht, Esq.  
Industry Arbitrator

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Signature Date

December 12, 2000  
Date of Service (For NASD office use only)

**Concurring Arbitrators' Signatures**

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Industry Arbitrator, Presiding Chair

  
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Douglas C. Evans  
Industry Arbitrator

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Signature Date

12-11-00  
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Steven M. Hecht, Esq.  
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Signature Date

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Douglas C. Evans  
Industry Arbitrator

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Signature Date

  
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Steven M. Hecht, Esq.  
Industry Arbitrator

Dec. 11, 2000  
\_\_\_\_\_  
Signature Date

December 12, 2000  
\_\_\_\_\_  
Date of Service (For NASD office use only)