

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Tower Hill Securities, Inc., (Claimant) vs. Yoav Bitter, (Respondent)

Case Number: 99-02784

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant Tower Hill Securities, Inc., hereinafter referred to as "Claimant": Michael D. Schissel, Esq., Arnold & Porter, New York, NY.

Respondent Yoav Bitter, hereinafter referred to as "Respondent": Herbert Monte Levy, Esq., a sole practitioner, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: June 18, 1999.

Reply to Counterclaim filed by Claimant on or about: September 17, 1999.

Claimant signed the Uniform Submission Agreement: June 16, 1999.

Statement of Answer and Counterclaim filed by Respondent on or about: September 9, 1999.

Respondent signed the Uniform Submission Agreement: September 9, 1999.

CASE SUMMARY

Claimant asserted the following causes of action: unlawful possession of Claimant's property; failure and refusal to return cellular phone and handheld computer to the firm upon Respondent's termination; and unauthorized travel expenses charged to Respondent's corporate credit card.

Unless specifically admitted in his Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: Respondent was at all times willing and able to return the cellular phone and handheld computer to Claimant provided that no adverse inferences could be made from such return and the travel expenses in question were for a trip during which company business was to be conducted.

In his Counterclaim, Respondent asserted the following causes of action: failure and refusal to pay Respondent's tuition expenses; failure to honor contractual commitment; failure to pay bonus compensation for 1998; and failure to provide Respondent with severance pay as is customary in the industry.

Unless specifically admitted in its Reply, Claimant denied the allegations made in the Counterclaim and asserted the following defenses: Respondent has failed to state a claim upon which relief can be granted; Respondent's causes of action are barred in whole or in

part by the doctrines of waiver, estoppel, laches, and unclean hands; Respondent's alleged damages were caused in whole or in part by his own actions, and not those of Claimant; and Respondent's causes of action are barred in whole or in part by the doctrines of collateral estoppel and res judicata.

RELIEF REQUESTED

Claimant requested that the Panel declare and order:

- a. That by refusing to return the cellular phone and handheld computer Respondent is unlawfully in possession of Claimant's property;
- b. That Respondent must return the cellular phone and handheld computer to Claimant within twenty-four (24) hours of the Panel's ruling or, in the alternative, pay to Claimant \$799.00 - a sum equivalent to the value of the phone and computer;
- c. That by refusing to reimburse Claimant for his unauthorized travel expenses, Respondent has unlawfully used company funds for his personal business;
- d. That Respondent must fully reimburse Claimant for the unauthorized travel and other expenses in the amount of \$2,179.95 within twenty-four (24) hours of the Panel's ruling; and
- e. That Respondent be ordered to pay forum fees, costs and expenses, and attorneys' fees consistent with the Arbitration Rules of the NASD.

In his Answer and Counterclaim, Respondent requested an award dismissing the claims of Claimant, and awarding Respondent the sum of \$21,000.00 on the First and Second Counterclaims with interest from September 3, 1999; the sum of \$100,000.00 on the Third Counterclaim with interest from January 1, 1999; and the sum of \$37,500.00 on the Fourth Counterclaim with interest from June 30, 1999.

In its Reply to the Counterclaim, Claimant requested that Respondent's Counterclaims be dismissed in their entirety and that Claimant be awarded any and all such relief as the Panel deems proper.

OTHER ISSUES CONSIDERED AND 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.

During the hearings in this matter, Claimant, through its attorney, withdrew all of its claims, except the relief requested that Respondent be ordered to pay forum fees, costs, and expenses, and attorneys' fees consistent with the NASD Code of Arbitration Procedure.

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. Claimant's claims are hereby denied in their entirety.
2. Claimant be and hereby is liable for and shall pay to Respondent the sum of \$8,333.00 in compensatory damages.
3. All other requests 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	= \$ 300.00
Counterclaim 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 that employed the associated person at the time of the events giving rise to the dispute. In this matter, Tower Hill Securities, Inc. is a party.

Member surcharge	= \$ 150.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

Adjournment Fees

Adjournments requested during these proceedings:

September 7, 2000, adjournment by Respondent	= \$1,125.00
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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:

One (1) Pre-hearing session with a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: September 7, 2000	1 session
One (1) Pre-hearing session with Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference: July 20, 2000	1 session

Four (4) Hearing sessions x \$1,125.00		= \$4,500.00
Hearing Dates:	October 24, 2000	2 sessions
	October 25, 2000	2 sessions
Total Forum Fees		= \$6,075.00

1. The Panel has assessed \$3,037.50 of the forum fees against Claimant.
2. The Panel has assessed \$3,037.50 of the forum fees against Respondent.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. Respondent requested tapes, \$15.00.

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 300.00
Member Fees	= \$3,250.00
Forum Fees	= \$3,037.50
Total Fees	= \$6,587.50
<u>Less payments</u>	<u>= \$1,125.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$5,462.50

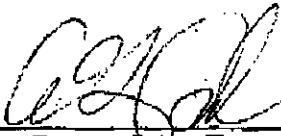
2. Respondent be and hereby is solely liable for:

Counterclaim Filing Fee	= \$ 300.00
Adjournment Fee	= \$1,125.00
Forum Fees	= \$3,037.50
<u>Administrative Costs</u>	<u>= \$ 15.00</u>
Total Fees	= \$4,477.50
<u>Less payments</u>	<u>= \$1,440.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$3,037.50

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.



A. George Saks, Esq.
Industry Arbitrator, Presiding Chair

Signature Date

Eric J. Sussman, Esq.
Industry Arbitrator

Signature Date

Joseph N. Morena
Industry Arbitrator


Signature Date

February 28, 2001
Date of Service (For NASD office use only)

Concurring Arbitrators' Signatures

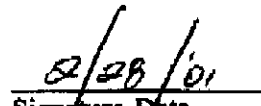
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Eric J. Sussman, Esq.
Industry Arbitrator

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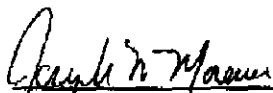
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Signature Date



Joseph N. Morena
Industry Arbitrator

2/28/2001

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