

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between:

Eric L. Goldstein, (Claimant) vs. Joseph Visconti, Joseph Charles and Company, Inc., and Joseph Charles & Associates, Inc., (Respondents) vs. Michael Wainstein, (Third-party Respondent)

Case Number: 99-04334

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Eric L. Goldstein, hereinafter referred to as "Claimant": Thomas J. Fleming, Esq. and Kenneth J. Rubenstein, Esq., Olshan Grundman Frome Rosenzweig & Wolosky LLP, New York, NY.

Respondents, Joseph Visconti ("Visconti"), Joseph Charles & Company, Inc. ("JCC"), and Joseph Charles and Associates, Inc. ("JCA"), hereinafter collectively referred to as "Respondents": Richard S. Rachlin, Esq. and Chris Kammerer, Esq., Law Offices of Richard S. Rachlin, P.A., North Palm Beach, FL.

Third-party Respondent, Michael Wainstein ("Wainstein"): Richard A. Roth, Esq., Littman Krooks Roth & Ball P.C., New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: September 22, 1999.

Reply to Counterclaim filed on or about: December 28, 1999.

Claimant signed the Uniform Submission Agreement: September 21, 1999.

Statement of Answer filed by Respondents on or about: September 24, 1999.

Supplemental Statement of Answer, Counterclaim, and Third-party Claim (entitled Crossclaim) filed by Respondents on or about: December 9, 1999.

Visconti did not sign the Uniform Submission Agreement.

JCC did not sign the Uniform Submission Agreement.

JCA did not sign the Uniform Submission Agreement.

Reply to Third-party Claim filed by Wainstein on or about: January 4, 2000.

Wainstein did not sign the Uniform Submission Agreement.

CASE SUMMARY

Claimant alleged that he entered into a contract (the "May Agreement") to acquire 53% of the outstanding stock of Respondent JCC, a corporation whose principal asset was its ownership of Respondent JCA, an NASD member. Claimant further alleged that the transaction was structured as a loan, convertible into equity upon approval by the NASD of the contemplated change in control. Claimant maintained that the May Agreement further provided that in the event the NASD did not approve the change in control, the \$1 million loan would become immediately due and payable to Claimant with interest at the rate of 10%. Claimant alleged that Respondents intentionally interfered with and frustrated performance of the May Agreement by, among other things, interfering with the NASD review process and failing to negotiate contemplated employment contracts in good faith. Claimant alleged that Respondents prematurely withdrew the application to the NASD for a change in control in an effort to frustrate consummation of the May Agreement.

Respondents asserted that the Panel lacked jurisdiction over the subject matter and parties to the dispute. In particular, Respondents alleged that this dispute did not arise in connection with the business or activities of an NASD member firm or associated person, and did not involve an industry or claim dispute over employment or termination of employment of an associated person. Additionally, Respondents asserted that the Panel lacked subject matter jurisdiction because Claimant was not a member or associated person or public customer of Respondents, and that JCC was not an NASD member firm.

Respondents further maintained that Claimant was not entitled to injunctive relief because the Statement of Claim alleged only an action for breach of contract for which a clear remedy at law was provided, including acceleration of the loan and payment of interest. Respondents also maintained that Claimant breached the May Agreement by, among other things, attempting to remove Respondent Visconti from the board of directors of JCC, and by failing to negotiate in good faith their employment contracts, as required under the May Agreement.

In their Counterclaim, Respondents alleged that Claimant fraudulently induced Respondents to enter into the May Agreement and to thereby forego offers from other investors, that Claimant made misrepresentations about his licensing with the NASD, and that Claimant failed to negotiate employment contracts in good faith, as required under the May Agreement. Respondents further alleged that Claimant was liable for negligent misrepresentation in the inducement of a contract, negligent misrepresentation, fraud, breach of contract, conspiracy to commit fraud and misappropriate assets, and tortious interference with business relationships.

RELIEF REQUESTED

Claimant requested injunctive relief (i) directing specific performance of the May Agreement, (ii) directing Respondents to resubmit the application for change in control to the NASD, (iii) enjoining Respondents from interfering with efforts by Claimant to communicate with employees of JCA regarding employment agreements, (iv) directing that Claimant and two of his nominees be restored to the Board of Directors of JCC, and (v) granting such other and further relief as may be necessary to restore Claimant to the full benefit of the May Agreement. Claimant also requested an award of attorneys' fees and hearing costs.

Claimant subsequently requested that, if the Panel determined not to award specific performance, that it alternatively render an order awarding Claimant the return of his \$1 million payment under the May Agreement, plus 10% interest, costs, and attorneys' fees.

Respondents requested that this matter be dismissed with prejudice and that all costs and fees be taxed against Claimant.

In their Counterclaim, Respondents requested damages in the approximate amount of \$750,000.00, plus interest, costs, attorneys' fees, and such further relief as the Panel deems just and appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

The Panel determined that JCC was not a member of the NASD, Inc. or an associated person at the time in question and accordingly, the Panel lacks jurisdiction over JCC.

JCA and Visconti did not file with the NASD Regulation, Inc. Office of Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

Prior to the hearing of this matter, Respondents withdrew their Third-party Claim against Michael Wainstein.

Due to the unavailability of one of the arbitrators, Thomas Massaro, on the dates scheduled for the hearing, the parties agreed to proceed with a Panel of two arbitrators.

During the hearings in this matter, the Panel granted Claimant's request to amend his claim to include the return of his \$1 million payment under the May Agreement, plus 10% interest, costs, and attorneys' fees, should the Panel determine not to award specific performance.

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, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents' Counterclaim is denied in its entirety with prejudice.
2. Respondents JCA and Visconti are jointly and severally liable for and shall pay to Claimant the sum of \$1,000,000.00, plus simple interest at a rate of 10% per annum accruing from May 21, 1999 until payment of the principal amount is made.
3. Claimant's requests for injunctive relief are hereby denied in their entirety.
4. All other claims for relief are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$ 250.00
Injunctive Relief fee	= \$ 2,500.00
Counterclaim filing fee	= \$ 1,250.00

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, Joseph Charles & Associates, Inc. is a party.

Member surcharge	= \$ 1,200.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 2,000.00

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 a single arbitrator x \$450.00	= \$ 900.00
Pre-hearing conferences: September 28, 1999	1 session
April 3, 2000	1 session
Three (3) Pre-hearing sessions with Panel x \$1,200.00	= \$ 3,600.00
Pre-hearing conferences: December 15, 1999	1 session
January 10, 2000	1 session
January 21, 2000	1 session
Fourteen (14) Hearing sessions x \$1,200.00	= \$16,800.00
Hearing Dates: April 10, 2000	1 session
April 12, 2000	2 sessions
April 13, 2000	2 sessions
April 14, 2000	2 sessions
June 21, 2000	2 sessions
June 22, 2000	2 sessions
June 23, 2000	2 sessions
July 7, 2000	1 session
Total Forum Fees	= \$21,300.00

The Panel has assessed all of the forum fees jointly and severally against Respondents JCA and Visconti.

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.

Claimant, requested tapes, \$285.00.

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 250.00
Injunctive Relief Fee	= \$ 2,500.00
Administrative Costs	= \$ 285.00
Total Fees	= \$ 3,035.00
Less payments	= \$ 4,320.00
Refund Due Claimant	= \$ 1,285.00

2. JCA be and hereby is solely liable for:

<u>Member Fees</u>	= \$ 3,800.00
Total Fees	= \$ 3,800.00
<u>Less payments</u>	= \$ 3,800.00
Balance Due NASD Regulation, Inc.	= \$ 0.00

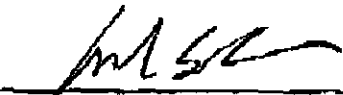
3. JCA and Visconti be and hereby are jointly and severally liable for:

Counterclaim Filing Fee	= \$ 1,250.00
<u>Forum Fees</u>	= \$21,300.00
Total Fees	= \$22,550.00
<u>Less payments</u>	= \$ 1,900.00
Balance Due NASD Regulation, Inc.	= \$20,650.00

All balances are due and payable to NASD Regulation, 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.



David S. Richan, Esq.
Industry Arbitrator, Presiding Chair

7/20/2000

Signature Date

Lucia A. Aschettino
Industry Arbitrator

Signature Date

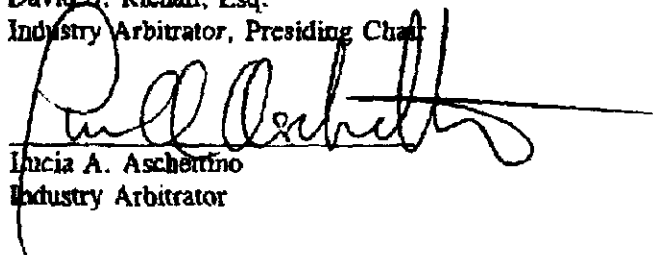
July 21, 2000

Date of Service (For NASD office use only)

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.

David S. Richan, Esq.
Industry Arbitrator, Presiding Chair



Lucia A. Aschettino
Industry Arbitrator

Signature Date

7/20/00

Signature Date

July 21, 2000

Date of Service (For NASD office use only)