

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

HD Brous & Co., Inc. (Claimant) v. Andrew Dorman (Respondent)

Case Number: 02-05467

Hearing Site: New York, New York

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Nature of the Dispute: Member vs. Associated Person

**REPRESENTATION OF PARTIES**

Claimant HD Brous & Co., Inc. ("HD Brous") hereinafter referred to as "Claimant":  
Robert A. Giacovas, Esq., and Spencer Mazyck, Esq., Lazare Potter Giacovas & Kranjac,  
LLP, New York, NY.

Respondent Andrew Dorman ("Dorman") hereinafter referred to as "Respondent":  
M. David Sayid, Esq., and Edward J. DeParma, Esq., Sayid and Associates, LLP, New  
York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: September 13, 2002.  
Amended Statement of Claim filed on or about: January 6, 2003.  
Response to Motion to Dismiss filed on or about: January 31, 2003.  
Claimant signed the Uniform Submission Agreement: September 24, 2002.

Statement of Answer and Motion to Dismiss filed by Respondent on or about: November  
27, 2002.  
Amended Statement of Answer and Motion to Dismiss filed by Respondent on or about:  
January 13, 2003.  
Response to Opposition to Motion to Dismiss filed on or about: April 7, 2003.  
Respondent signed the Uniform Submission Agreement: October 21, 2002.

**CASE SUMMARY**

A general summary of the dispute, based upon the pleadings and the allegations presented  
at hearing follows:

Claimant alleges that it was forced to bring this arbitration because of the unjustified  
refusal of its former employee, Respondent Dorman, to honor his oral promise to pay a  
portion of the defense costs of a litigation that involved one of his clients. Respondent  
repudiated his agreement, Claimant alleges, but waited until counsel, at Claimant's  
expense, was retained and had drafted a written agreement. Claimant avers that the oral

agreement is enforceable, but it also maintains that, since Respondent repudiated the oral promise to pay a portion of the costs, Claimant should be able to recover all of its litigation costs, consistent with the common law of indemnification. In an Amended Statement of Claim, Claimant also alleges a course of action, subsequent to the filing of this arbitration, to discredit and defame Claimant brokerage firm by falsely asserting to another individual in a public gathering that Respondent was under NYSE investigation for a specific rule violation.

Respondent answered it was not a party to the litigation that Claimant defended and had no legal or contractual obligation to pay any or all of the litigation expenses or to indemnify his former employer, the Claimant. Addressing the telephone conversations in which Claimant recorded an alleged promise to pay, Respondent answered that the promise was based upon a hypothetical undertaking, that it was conditioned upon the making of a written agreement, and that it was rendered unenforceable by the statute of frauds, duress, the absence of consideration or lack of agreement upon material terms. The alleged defamatory statements in the Amended Statement of Claim were denied as never made or true, to the extent made, or stated as a belief or opinion.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested entry of an award against Respondent in an amount to be determined at arbitration but in no event less than \$58,382.28, plus the costs of this arbitration, including reasonable attorneys' fees, plus interest on all of the foregoing amounts.

In its Amended Statement of Claim, Claimant requested an entry of an award against Respondent on the First Claim, in an amount to be determined at arbitration but in no event less than \$58,382.28, plus the costs of this arbitration, including reasonable attorneys' fees, plus interest on all of the foregoing amounts; on the Second Claim, in an amount to be determined at arbitration, plus punitive damages of no less than \$250,000.00, and the costs of this arbitration, including reasonable attorneys' fees.

In its Response to the Motion to Dismiss, Claimant requested that the Motion to Dismiss be denied in its entirety.

In his Statement of Answer and Motion to Dismiss, Respondent requested that the Panel dismiss this arbitration in its entirety and award to Respondent costs, fees and expenses in an amount to be determined by the esteemed Panel.

In his Amended Statement of Answer and Motion to Dismiss, Respondent requested that the Panel dismiss this arbitration in its entirety and award to Respondent costs, fees and expenses in an amount to be determined by the Panel.

In his Response to the Opposition to the Motion to Dismiss, Respondent requested that the claims be dismissed in their entirety and award to Respondent costs, fees and expenses in an amount to be determined by the Panel.

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

Respondent filed a Motion to Dismiss based upon the frivolous nature of the claim and for sanctions in the form of attorneys' fees. The Panel denied the Motion as part of its deliberations on the merits.

At the hearing, the parties agreed that the Panel should award reasonable attorneys' fees to the prevailing party with the caveat that the party must prevail on both the Thermco fee claim and the defamation claim. The amount awarded in paragraph 1 of the Award section below relates to the first claim for indemnification of legal expenses, and not on the second claim for defamation. Since Claimant prevailed on only one of two claims, attorney fees were not awarded.

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.

### **ARBITRATORS' REMARKS**

In an industry where many of us make transactions each and every working day valued in the tens of thousands of dollars to millions of dollars on our word alone, this industry is truly one where it is expected that "your word is your bond". Thus, if an oral agreement existed between the securities industry parties in this case, it is a valid binding agreement. If Respondent did not believe an oral agreement existed, he should have so stated at the time the first draft contract was presented to him. In this case, whether the oral agreement was reduced to writing or not is no more a test of whether it was a binding agreement than whether a written confirmation of a trade was issued in a timely manner.

### **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. Respondent is liable for and shall pay to the Claimant compensatory damages in the amount of \$14,572.27, plus interest at the rate of 9% per annum from November 15, 2002 through the date of Award. Post-award interest shall accrue at the legal rate, commencing thirty days after the date of the Award if not paid in full.
2. Any and all relief not specifically addressed herein is denied.

**FEES**

Pursuant to the Code, the following fees are assessed:

**Filing Fees**

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

Initial claim filing fee = \$1,000.00

**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. Accordingly, HD Brous & Co. is a party.

Member surcharge = \$1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$2,750.00

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A 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 @ \$450.00 = \$ 450.00  
Pre-hearing conference: September 22, 2003 1 session

One (1) Pre-hearing session with Panel @ \$1,125.00 = \$1,125.00  
Pre-hearing conference: June 6, 2003 1 session

Four (4) Hearing sessions @ \$1,125.00 = \$4,500.00  
Hearing Dates: November 4, 2003 2 sessions  
November 5, 2003 2 sessions

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Total Forum Fees = \$6,075.00

1. The Panel has assessed \$2,812.50 of the forum fees against Claimant.
2. The Panel has assessed \$3,262.50 of the forum fees against Respondent.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$1,000.00
Member Fees	= \$5,200.00
<u>Forum Fees</u>	<u>= \$2,812.50</u>
Total Fees	= \$9,012.50
<u>Less payments</u>	<u>= \$7,325.00</u>
Balance Due NASD Dispute Resolution	= \$1,687.50

2. Respondent is solely liable for:

<u>Forum Fees</u>	<u>= \$3,262.50</u>
Total Fees	= \$3,262.50
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$3,262.50


All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Richard P. Ryder, Esq. - Non-Public Arbitrator, Presiding Chair  
Gilbert F. Bach, Sr. Esq. - Non-Public Arbitrator  
Preston V. Pumphrey - Non-Public Arbitrator

**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.

  
Richard P. Ryder, Esq.  
Non-Public Arbitrator, Presiding Chairperson

12-23-03  
Signature Date

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Gilbert F. Bach, Sr., Esq.  
Non-Public Arbitrator

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Signature Date

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Preston V. Pumphrey  
Non-Public Arbitrator

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Signature Date

December 24, 2003

Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

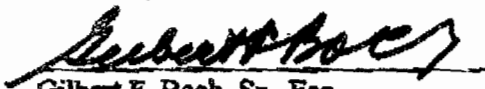
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