

**Award
FINRA Dispute Resolution**

In the Matter of the Arbitration Between:

Claimant

Michael Phelan, as Assignee for the benefit of the creditors of LH Ross & Company, Inc., as Assignor

Case Number: 09-04558

vs.

Respondents

Timothy Patrick Higgins
Edward William Goetz
Mark Phillip Goetz
Gerald John Cocuzzo
Lon Charles Faccini
Abed William Lulu
Brian Joseph Lombardi
Christopher Charles Klein
Andrew Walter Holtmeyer

Hearing Site: New York, New York

Nature of the Dispute: Member vs. Associated Persons

REPRESENTATION OF PARTIES

Claimant Michael Phelan, as Assignee for the benefit of the creditors of LH Ross & Company, Inc., as Assignor, hereinafter referred to as "Claimant": Mark A. Berman, Esq., Ganfer & Shore, LLP, New York, New York.

Respondents Timothy Patrick Higgins ("Higgins"), Gerald John Cocuzzo ("Cocuzzo"), Abed William Lulu ("Lulu"), and Brian Joseph Lombardi ("Lombardi"), hereinafter collectively referred to as "Respondents": Marni Rae Robin, Esq., McCormick & O'Brien, LLP, New York, New York.

Respondent Edward William Goetz, hereinafter referred to as "E. Goetz" appeared pro se.

Respondent Mark Phillip Goetz, hereinafter referred to as "M. Goetz" appeared pro se.

Respondent Lon Charles Faccini, hereinafter referred to as "Faccini": Martin P. Hunger, Esq., Burkhart Wexler & Hirshberg, LLP, Garden City, New York.

Respondent Christopher Charles Klein, hereinafter referred to as "Klein" appeared pro se.

Respondent Andrew Walter Holtmeyer, hereinafter referred to as "Holtmeyer" appeared pro se.

CASE INFORMATION

Statement of Claim filed on or about: July 31, 2009.
Answer to Counterclaim filed on or about: December 24, 2009.
LH Ross & Company, Inc. signed the Submission Agreement: July 31, 2009.

Statement of Answer and Counterclaim filed by Higgins on or about: November 6, 2009.
Amendment to the Statement of Answer and Counterclaim filed by Higgins on or about: November 23, 2009.
Timothy Patrick Higgins signed the Submission Agreement.

Statement of Answer filed by Cocuzzo on or about: November 25, 2009
Amendment to Statement of Answer filed by Cocuzzo on or about: November 30, 2009.
Gerald John Cocuzzo signed the Submission Agreement: November 5, 2009.

Statement of Answer filed by Lulu on or about: November 9, 2009.
Amendment to Statement of Answer filed by Lulu on or about: November 30, 2009.
Abed William Lulu signed the Submission Agreement: November 3, 2009.

Statement of Answer filed by Lombardi on or about: November 9, 2009.
Amendment to Statement of Answer filed by Lombardi on or about: November 30, 2009.
Brian Joseph Lombardi signed the Submission Agreement: November 5, 2009.

Joint Statement of Answer filed by E. Goetz and M. Goetz on or about: November 5, 2009.
Amendments to Statement of Answer filed by E. Goetz and M. Goetz on or about: November 23, 2009 and December 28, 2009.
Edward William Goetz signed the Submission Agreement: October 21, 2009.
Mark Phillip Goetz signed the Submission Agreement: October 20, 2009.

Statement of Answer filed by Faccini on or about: September 28, 2009.
Amendment to Statement of Answer filed by Faccini on or about: November 30, 2009.
Lon Charles Faccini signed the Submission Agreement: September 17, 2009.

Statement of Answer filed by Klein on or about: October 1, 2009.
Christopher Charles Klein signed the Submission Agreement: September 25, 2009.

Statement of Answer filed by Holtmeyer on or about: November 23, 2009.
Andrew Walter Holtmeyer signed the Submission Agreement: October 21, 2009.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract for promissory notes, unjust enrichment, and for money had and received.

Unless specifically admitted in his Answer, Higgins denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

In his Counterclaim, Higgins asserted the following causes of action: breach of contract, unjust enrichment, and violation of New York Labor Law.

Unless specifically admitted in its Answer, Claimant denied the allegations made in the Counterclaim and asserted various affirmative defenses.

Unless specifically admitted in their Answer, E. Goetz and M. Goetz denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in his Answer, Cocuzzo denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in his Answer, Faccini denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in his Answer, Lulu denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in his Answer, Lombardi denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in his Answer, Klein denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in his Answer, Holtmeyer denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested that the Panel award:

1. compensatory damages in the amount of \$360,000.00 from Higgins, plus interest, and costs;
2. compensatory damages in the amount of \$285,715.00 from E. Goetz, plus interest, and costs;
3. compensatory damages in the amount of \$285,715.00 from M. Goetz, plus interest and costs;
4. compensatory damages in the amount of \$130,000.00 from Cocuzzo, plus interest, and costs;
5. compensatory damages in the amount of \$60,000.00 from Faccini, plus interest, and costs;
6. compensatory damages of in the amount of \$100,000.00 from Lulu, plus interest, and costs;
7. compensatory damages in the amount of \$50,000.00 from Lombardi, plus interest, and costs;
8. compensatory damages in the amount of \$50,000.00 from Klein, plus interest, and costs;
9. compensatory damages in the amount of \$40,287.78 from Holtmeyer, plus interest, and costs, and
10. costs and disbursements, including reasonable attorneys' fees, as may be allowed by law, and such other and further relief as the Panel deems just and proper.

At the hearing, Claimant requested damages in the amount of \$674,503.16 against E. Goetz, \$674,503.16 against M. Goetz, and \$95,391.90 against Holtmeyer.

Higgins requested dismissal of the Statement of Claim in its entirety.

In his Counterclaim, Higgins requested compensatory damages in the amount of \$300,000.00, plus interest, liquidated damages, attorneys' fees, and such other and further relief that the Panel deems just, equitable, and proper.

Claimant requested dismissal of Higgins' Counterclaim in its entirety, attorneys' fees, costs, and such other and further relief as the Panel deems just and proper.

E. Goetz and M. Goetz requested dismissal of the Statement of Claim in its entirety, reasonable attorneys' fees, costs, and such other and further relief that the Panel deems just, equitable, and proper.

Cocuzo requested dismissal of the Statement of Claim in its entirety, reasonable attorneys' fees, costs, and such other and further relief that the Panel deems just, equitable, and proper.

Faccini requested dismissal of the Statement of Claim in its entirety, costs and attorneys' fees under Florida law, and for such other relief that the Panel deems fit.

Lulu requested dismissal of the Statement of Claim in its entirety, reasonable attorneys' fees, costs, and such other and further relief that the Panel deems just, equitable, and proper.

Klein requested dismissal of the Statement of Claim in its entirety, costs, all forum fees be assessed against Claimant, and for such other and further relief as the Panel deems appropriate.

Holtmeyer requested dismissal of the Statement of Claim in its entirety, reasonable attorneys' fees, costs, and such other and further relief that the Panel deems just, equitable, and proper.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

Respondents filed a Motion to Change Venue from Boca Raton, Florida to New York, New York and Claimant objected. By Order dated March 11, 2010, the Panel granted Respondents' Motion.

By correspondence dated December 7, 2011, Claimant notified FINRA Dispute Resolution that the Circuit Court of the 15th Judicial Circuit in and for Palm Beach County, Florida, approved the settlements that Claimant reached with Lombardi, Cocuzzo, and Lulu, and that Claimant dismissed its claims against Lombardi, Cocuzzo, and Lulu with prejudice.

By correspondence dated April 17, 2012, Claimant notified FINRA Dispute Resolution that Claimant and Respondent Higgins settled their respective claims and counterclaims against each other, which settlement is pending approval from the Florida Circuit Court.

By correspondence dated September 6, 2012, Claimant notified FINRA Dispute Resolution that the Circuit Court of the 15th Judicial Circuit in and for Palm Beach County, Florida, approved the settlements that Claimant reached with Klein, Faccini, and Higgins, and that Claimant dismissed its claims against Klein, Faccini, and Higgins with 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 post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. E. Goetz is liable for and shall pay to Claimant compensatory damages in the amount of \$260,715.83 plus interest at the rate of 6% per annum from the date of the award until paid in full.
2. M. Goetz is liable for and shall pay to Claimant compensatory damages in the amount of \$260,715.83 plus interest at the rate of 6% per annum from the date of the award until paid in full.
3. Holtmeyer is liable for and shall pay to Claimant compensatory damages in the amount of \$40,276.97 plus interest at the rate of 6% per annum from the date of the award until paid in full.
4. Any and all relief not specifically addressed herein is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

FINRA Dispute Resolution assessed a filing fee* for each claim:

| | |
|--------------------------|---------------|
| Initial Claim Filing Fee | = \$ 3,200.00 |
| Counterclaim Filing Fee | = \$ 1,425.00 |

**The filing fee is made up of a non-refundable and a refundable portion.*

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, as a party, LH Ross & Company, Inc., is assessed the following:

| | |
|----------------------------|---------------|
| Member Surcharge | = \$ 2,800.00 |
| Pre-Hearing Processing Fee | = \$ 750.00 |
| Hearing Processing Fee | = \$ 5,000.00 |

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

March 14-16, 21-23, 29-30 and April 4-5, 2011 adjournment by parties . . . Waived

May 22-24, 2012 adjournment by E. Goetz and M. Goetz . . . = \$ 1,200.00

The Panel assessed the \$1,200.00 adjournment fee jointly and severally to E. Goetz and M. Goetz.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

May 22-24, 2012 adjournment by E. Goetz and M. Goetz = \$ 300.00

The Panel assessed the \$300.00 adjournment fee jointly and severally to E. Goetz and M. Goetz.

Discovery-Related Motion Fees

Fees apply for each decision rendered on a discovery-related motion.

One (1) Decision on discovery-related motion on the papers
with (1) one arbitrator @ \$200.00 = \$ 200.00

Respondents E. Goetz, M. Goetz, and Higgins submitted one discovery-related motion
Total Discovery-Related Motion Fees = \$ 200.00

The Panel has assessed the \$200.00 discovery-related motion fees jointly and severally to E. Goetz and M. Goetz.

Hearing Session Fees and Assessments

The Panel has assessed hearing session 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:

Four (4) Pre-hearing sessions with Panel @ \$1,200.00 = \$ 4,800.00

Pre-hearing conferences: February 2, 2010 1 session
July 22, 2010 1 session
August 9, 2011 1 session
June 20, 2012 1 session

Six (6) Hearing sessions @ \$1,200.00 = \$ 7,200.00

Hearing Dates: May 15, 2012 2 sessions
October 2, 2012 2 sessions
October 3, 2012 2 sessions

Total Hearing Session Fees = \$12,000.00

1. The Panel has assessed \$6,000.00 of the hearing session fees to Claimant.
2. The Panel has assessed \$2,000.00 of the hearing session fees to E. Goetz.
3. The Panel has assessed \$2,000.00 of the hearing session fees to M. Goetz.
4. The Panel has assessed \$2,000.00 of the hearing session fees to Holtmeyer.

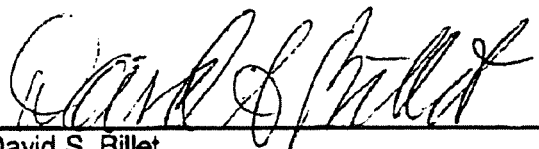
All balances are payable to FINRA Dispute Resolution and are due upon receipt.

ARBITRATION PANEL

| | | |
|--------------------|---|--|
| David S. Billet | - | Public Arbitrator, Presiding Chairperson |
| William G. Binckes | - | Public Arbitrator |
| Michael T. Curley | - | Non-Public Arbitrator |

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.

Concurring Arbitrators' Signatures



David S. Billet
Public Arbitrator, Presiding Chairperson

12/5/12

Signature Date

William G. Binckes
Public Arbitrator

Signature Date

Michael T. Curley
Non-Public Arbitrator

Signature Date

December 13, 2012
Date of Service (For FINRA Dispute Resolution office use only)

ARBITRATION PANEL

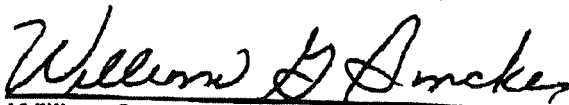
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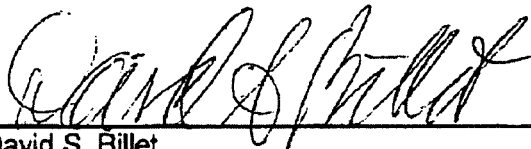
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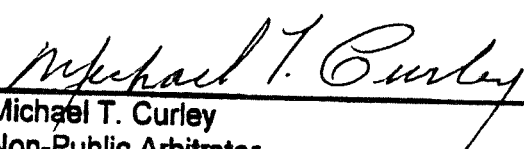
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