

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimant  
Jeffrey Lowell Houston

Case Number: 18-03355

vs.

Respondents  
Navidar Group LLC, Navidar LLC,  
and Navidar Holdco LLC

Hearing Site: Houston, Texas

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Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

Nature of the Dispute: Associated Person vs. Member and Non-Members

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimant Jeffrey Lowell Houston (“Claimant”): Kell A. Simon, Esq., The Law Offices of Kell A. Simon, Austin, Texas.

For Respondents Navidar Group LLC, Navidar LLC, and Navidar Holdco LLC (collectively, “Respondents”): Eric S. Lipper, Esq., Hirsch & Westheimer, P.C., Houston, Texas.

**CASE INFORMATION**

Statement of Claim filed on or about: October 1, 2018.

Answer to Counterclaim filed on or about: December 25, 2018.

First Amended Statement of Claim filed on or about: February 26, 2019.

Second Amended Statement of Claim filed on or about: November 9, 2020.

Third Amended Statement of Claim filed on or about: March 23, 2021.

Claimant signed the Submission Agreement: October 3, 2018.

Statement of Answer and Counterclaim filed on or about: December 3, 2018.

Amended Statement of Answer filed on or about: November 18, 2020.

Respondents signed the Submission Agreement: February 7, 2019.

**CASE SUMMARY**

In the Third Amended Statement of Claim, Claimant asserted the following causes of action: breach of contract, unjust enrichment, quantum meruit, and fraud. The causes of action related

to Claimant's allegation that he is owed compensation for his role in leading the preparation of marketing materials for multiple clients.

Unless specifically admitted in the Statement of Answer and Counterclaim and Amended Statement of Answer, Respondents denied Claimant's allegations and asserted various affirmative defenses. In the Statement of Answer and Counterclaim, Respondents also asserted the following causes of action: breach of contract, unjust enrichment, and quantum meruit. The causes of action related to Respondents' allegation that Claimant's work product and efforts on assigned projects were inadequate, causing financial harm and the loss of good will with clients.

Unless specifically admitted in the Answer to Counterclaim, Claimant denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Third Amended Statement of Claim, Claimant requested amounts owed because of non-payment of agreed-upon compensation, including \$198,870.29 for his role in leading the preparation of marketing materials; reasonable attorneys' fees for bringing this action as authorized under Texas statutory law and common laws and FINRA Rules of Fair Practice; reasonable attorneys' fees and all costs incurred in defending against each and every counterclaim asserted and subsequently voluntarily dismissed with prejudice; pre-hearing and post-hearing interest; expert witness fees; all costs of these proceedings, including forum fees, hearing session fees, and costs in bringing this action; and any and all further relief to which he may be entitled.

In the Statement of Answer and Counterclaim, Respondents requested that Claimant take nothing by way of his claims and an award of compensation for damages sustained as a direct, proximate, and consequential result of the acts of Claimant, including, but not limited to: damages in excess of \$100,000.00; reasonable attorneys' fees, as authorized under Texas statutory law and common law and FINRA Rules of Fair Practice; pre-hearing and post-hearing interest; expert witness fees; all costs of these proceedings, including forum fees, hearing session fees, and costs in bringing this action; and any and all further relief to which they may be justly entitled.

In the Answer to Counterclaim, Claimant did not request any relief.

In the Amended Statement of Answer, Respondents requested that Claimant take nothing by way of his claims and an award of compensation for damages sustained as a direct, proximate, and consequential result of the acts of Claimant, including, but not limited to: reasonable attorneys' fees, as authorized under Texas statutory law and common law and FINRA Rules of Fair Practice; pre-hearing and post-hearing interest; all costs of these proceedings, including forum fees, hearing session fees, and costs in bringing this action; and any and all further relief to which they may be justly entitled.

On December 2, 2020, Respondents filed notice that their only request for affirmative relief was for attorneys' fees and arbitration costs, pursuant to the parties' written agreement ("Parties' Agreement").

At the hearing, Claimant requested compensatory damages in the amount of \$198,878.29, attorneys' fees in the amount of \$96,752.50, and costs in the amount of \$2,771.40. And, Respondents requested \$89,752.90 in attorneys' fees and FINRA forum fees.

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

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

On February 26, 2019, Claimant filed an Unopposed Motion for Leave to File Amended Statement of Claim, to which no response was filed. In an Order dated March 5, 2019, the Panel granted Claimant's Motion for Leave to File Amended Statement of Claim.

On June 2, 2020, Claimant filed a Motion to Dismiss Counterclaim, to which no response was filed. On July 23, 2020, Respondents filed a Notice of Dismissal with Prejudice, as to the Counterclaim asserted against Claimant. Thereafter, the Motion to Dismiss Counterclaim was moot.

On November 9, 2020, Claimant filed a Motion for Leave to Amend ("Motion for 2<sup>nd</sup> ASOC"), to which no response was filed. On November 19, 2020, Respondents filed a Motion for Leave to File Amended Answer ("Motion for Amended Answer"). On November 24, 2020, Claimant filed a Notice Regarding Motion for 2<sup>nd</sup> ASOC, clarifying that the motion was unopposed and confirming that he did not oppose the Motion for Amended Answer. In an Order dated November 25, 2020, the Panel granted the Motion for 2<sup>nd</sup> ASOC and Motion for Amended Answer.

During the evidentiary hearing, Claimant moved for leave to file a Third Amended Statement of Claim. Respondent objected to the oral motion. After oral arguments, the Panel granted Claimant's motion on the record at the hearing.

The Panel has provided an explanation of the decision in this award. The explanation is for the information of the parties only and is not precedential in nature.

The Award in this matter may be executed in counterpart copies.

### **ARBITRATORS' FINDINGS**

The Panel determined that the Parties' Agreement is binding on both parties, as the product of fair negotiation between them, and this Panel has no legal power to rewrite its terms. The Panel evaluated the testimony and other documentary evidence accordingly. The sum of \$21,389.18 awarded to Claimant as compensatory damages represents the unpaid portion of the incentive compensation earned by Claimant from the PS transaction, the first of the nine claims alleged in the Third Amended Statement of Claim, less the sum of \$400.00 owed by Claimant as reimbursement for the airline ticket to Las Vegas that was for Claimant's personal, not business, travel. The Panel makes no award of damages on the other eight transactions alleged in the Third Amended Statement of Claim, as Claimant did not carry his burden of proof to show a right to recovery of such amounts, under the incentive structure provision of the Parties' Agreement, for the six transactions that closed and the two transactions that did not close.

The award of attorneys' fees to Claimant is made per the discretionary authority granted to the Panel in Paragraph 7 of the Parties' Agreement and under Tex. Civ. Prac. & Rem. Code § 38.001. The amount awarded is less than the amount of attorneys' fees sought by Claimant because of the Panel's determination that Claimant failed to meet his burden of proof to support an award of damages on eight of the nine transactions. Also, the Panel considered Claimant's attorneys' fees incurred in defending against Respondents' unmeritorious Counterclaim, which was voluntarily dismissed by Respondents in 2020. Moreover, the Panel rejected the contention that the Court of Appeals' decision in *Lipper v. Haynes*, 2019 WL 355999, would prohibit an award of attorneys' fees to Claimant arising from defense of the Counterclaim. Here, Claimant sought such an award against Respondents, not their prior attorney, and the attorneys' fees were not an element of economic damages on the principal claim. Further, Paragraph 7 of the Parties' Agreement grants broad discretion to the Panel to allocate attorneys' fees and arbitration costs between the parties. The Panel made the allocation of costs assessed by FINRA in this case that it believes is fair and reasonable to both sides.

### **AWARD**

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

1. Respondents are jointly and severally liable for and shall pay to Claimant the sum of \$21,389.18 in compensatory damages.
2. Respondents are jointly and severally liable for and shall pay to Claimant prejudgment and postjudgment interest on the above-stated sum from October 1, 2018 through and including this Award is paid full, as provided in Tex. Fin. Code § 304.001 et seq. and *Johnson & Higgins of Tex., Inc. v. Kenneco Energy, Inc.*, 962 S.W.2d 507 (Tex. 1998).
3. Respondents are jointly and severally liable for and shall pay to Claimant the sum of \$43,000.00 in attorneys' fees, pursuant to the Parties' Agreement and Tex. Civ. Prac. & Rem. Code § 38.001.
4. Respondents are jointly and severally liable for and shall pay to Claimant the sum of \$2,771.40 in costs.
5. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages and treble damages, are denied.

### **FEES**

Pursuant to the Code of Arbitration Procedure, the following fees are assessed:

#### **Filing Fees**

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

Initial Claim Filing Fee	= \$	1,425.00
Counterclaim Filing Fee	= \$	2,125.00

*\*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 firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Navidar Group LLC is assessed the following:

Member Surcharge	= \$	1,700.00
Member Process Fee	= \$	3,250.00

### **Postponement Fees**

Postponements granted during these proceedings for which fees were assessed or waived:

December 7, 2020, postponement requested by the parties	= \$	1,125.00
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Total Postponement Fees	= \$	1,125.00

The Panel has assessed \$562.50 of the postponement fees to Claimant.

The Panel has assessed \$562.50 of the postponement fees jointly and severally to Respondents.

### **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 Arbitrator(s), including a pre-hearing conference with the Arbitrator(s), which lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session with a single Arbitrator @ \$450.00/session	= \$	450.00
Pre-Hearing Conference: September 25, 2019	1 session	
Four (4) pre-hearing sessions with the Panel @ \$1,125.00/session	= \$	4,500.00
Pre-Hearing Conferences: February 5, 2019	1 session	
February 26, 2020	1 session	
July 23, 2020	1 session	
January 13, 2021	1 session	
Six (6) hearing sessions @ \$1,125.00/session	= \$	6,750.00
Hearings: March 23, 2021	2 sessions	
March 24, 2021	2 sessions	
March 25, 2021	2 sessions	
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Total Hearing Session Fees	= \$	11,700.00

The Panel has assessed \$5,287.50 of the hearing session fees to Claimant.

The Panel has assessed \$6,412.50 of the hearing session fees jointly and severally to Respondents.

**ARBITRATION PANEL**

Mark C. Watler	-	Public Arbitrator, Presiding Chairperson
Patricia Fenix Bastine	-	Public Arbitrator
Nohayia Javed	-	Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument, which is my award.

**Concurring Arbitrators' Signatures**

***Mark C Watler***

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Mark C. Watler  
Public Arbitrator, Presiding Chairperson

**04/07/2021**

\_\_\_\_\_  
Signature Date

***Patricia Fenix Bastine***

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Patricia Fenix Bastine  
Public Arbitrator

**04/09/2021**

\_\_\_\_\_  
Signature Date

***Nohayia Javed***

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Nohayia Javed  
Non-Public Arbitrator

**04/08/2021**

\_\_\_\_\_  
Signature Date

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April 09, 2021

Date of Service (For FINRA Dispute Resolution Services use only)