JAMS ARBITRATION
NO. 1425022927

In the matter of the arbitration
between

Capital Enterprises, Co.,

Claimant,

Alvin Dworman,

Respondent

CLARIFICATION OF CORRECTED PARTIAL FINAL AWARD

On July 30, 2018, the undersigned arbitrator issued a "Corrected Partial Final Award", which concluded that damages in the amount of $31,434,230.08 (hereinafter "$31.4M") had been determined to have occurred. On August 6, 2018, following issuance of this Partial Final Award, Respondent, Alvin Dworman, moved in the Supreme Court, New York County, before the Hon. Jennifer Schecter, for confirmation. It appears that in that proceeding, Respondent contended that the award concluded that the $31.4M was not to the Partnership, Capital Properties Company, but rather

personal or individually to Alvin Dworman. It also appears that the Supreme Court agreed that the parties should seek clarification of the damages Award. This led to submission of letters dated: August 20, 2018 (Claimant); August 31, 2018 (Respondent); and September 13, 2018 (Claimant).

In its August 20th letter, Claimant essentially contends that the damages were not awarded individually to Respondent Alvin Dworman, but rather to the Capital Properties Company ("Partnership"). To do otherwise, it is argued, "is not only inconsistent with the Partial Award's finding....[But] would effectively convert the Partial Award into a damage award that is not stated". According to Claimant, although the first counterclaim is styled "individually and derivatively", its actual language provides that: "Claimant and/or Palin account to the Partnership for any such benefits and hold as trustee for the Partnership any such profits" (First Counterclaim, ¶3, Jt. Ex. #24). Claimant also refers to Respondent's "WHEREFORE CLAUSE", which demands "a full accounting of the Partnership's affairs and the monies owed and damages caused by Claimant to the Partnership" (Id. at p. 9). Claimant also discusses various cases where courts have held that the damages sought were those of the partnership, not those of an individual partner.

In opposition, Respondent, in his August 31th letter, initially argues that the Award need not be clarified, contending that this is simply an attempt "to rewrite the Award so as to give Claimant a 50% credit for the damages it had caused". In his letter, Respondent argues: (a) in light of the Award's conclusion that "Claimant engaged in dishonest and wrongful conduct, including with respect to the [partnership] books and records", what is characterized as "the Arbitrator's award of damages directly to Respondent", is argued to be "justifiably fair and appropriate[1]"; (b) that there is no procedure for such clarification, and that in any event, "Claimant never once argued in the course of the Arbitration that Mr. Dworman's claims for damages were derivative in nature; (c) that Claimant's argument is a "mischaracterization of Respondent's pleading"; and (d) that New York law is "well-settled" that damages may be "properly" awarded to an individual partner.

In its September 13th reply, Claimant opposes Respondent's discussion of the law of New York; argues that the issue of "alleged discovery deficiencies" was fully briefed and should be disregarded; and contends that

[1] This contention, which flows from the Respondent's statement earlier in the letter that Claimant "simply ignored (i) the Arbitrator's inherent discretion to make whatever award of damages he deemed appropriate". Supporting his claim that he is entitled to personal damages, Claimant further states that that because of his alleged failure to obtain all necessary records, he was "not able to demonstrate the full extent of Claimant's dishonesty and theft from the Partnership. [Thus] Claimant was unfairly able to limit the damages awarded in the Arbitration".

the references to the pleadings demonstrates that they "set forth damages to the Partnership".

With these competing letters firmly in mind, I turn to the language of the Corrected Partial Final Award, which is most conclusive of what the nature of the damages was intended to be. First, as stated on pages 7-8, "Dworman counterclaims for damages and an accounting…" As pointed out above, although the First Counterclaim, in its title refers to" Individually and Derivatively", the text of the counterclaim demands that "Claimant and/or Palin account to the Partnership". On page 11, referring again to the counterclaims, I wrote that "Dworman demands that Enterprises and/or Palin account to the Partnership, and hold as trustee for the Partnership". Then, after discussing the nature of the various damages which had been proven, I directed that, after the sale of the partnership's properties, the "Claimant and Respondent are directed to settle the account, or 'true-up' taking into account the damages computed in this Award…" (page 59). Finally, in my "DAMAGES SUMMARY", on page 63, utilizing the table format proposed in Respondent's Post-Hearing Brief (p. 107), I itemized the damages under an introductory line, which reads "Summarizing the damages which have been determined in the Partial Final Award, they are as follows:". Notably, I did

not utilize the Claimant's introductory language which stated: "In total, Dworman has sustained the following categories of damage". This omission was intentional: it was intended to make clear that the damages which I had calculated, based upon the arbitral proceedings, were not suffered by Dworman, in his individual capacity.

While certainly New York law, when appropriate, supports individualized damages in an action amongst partners , there is no need to discuss the cited cases, since, as demonstrated in the text of the Award, I never concluded or determined that individualized damages were appropriate or warranted. To be clear, it was **never** my intention "to specify[] that the $31,434,230.08 in damages…be awarded directly to Respondent Dworman". It was my clear intent, which I thought to be obvious, that the $31.4M damages were awarded on behalf of Capital Properties Company, the "Partnership".

However, in light of the unforeseen dispute which has occurred, my Corrected Partial Final Award is "clarified" as follows:

> **The total damages calculated in the amount of $31,434,230.08, are awarded to Capital Properties Company directly and not individually to Alvin Dworman, or to any other partner. Such damages are to be taken into consideration in the final accounting,**

which will occur after liquidation, in accordance with Section XV ("Accounting") of the Corrected Partial Final Award.

Bernard J. Fried

Hon. Bernard J. Fried (Ret.)

Dated: September 21, 2018

SERVICE LIST

Case Name: Capital Enterprises Co. vs. Dworman, Alvin
Reference #: 1425022927
Panelist: Fried, Bernard J.,
Hear Type: Arbitration
Case Type: Business/Commercial

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PROOF OF SERVICE BY EMAIL & U.S. MAIL

Re: Capital Enterprises Co. vs. Dworman, Alvin
Reference No. 1425022927

I, Cathleya Fajardo, not a party to the within action, hereby declare that on September 27, 2018, I served the attached Clarification of Corrected Partial Final Award on the parties in the within action by Email and by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Mail, at New York, NEW YORK, addressed as follows:

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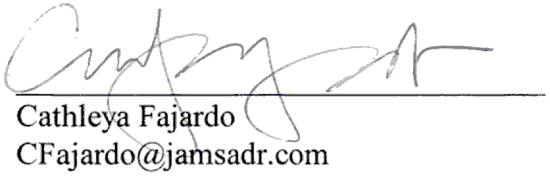
I declare under penalty of perjury the foregoing to be true and correct. Executed at New York, NEW YORK on September 27, 2018.



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