CAUSE NO. 08-12340 431K 000093

DON NELSON, Plaintiff, vs. DALLAS BASKETBALL LIMITED d/b/a DALLAS MAVERICKS Defendant.	§ § § § § § § § § §	IN THE DISTRICT COURT DALLAS COUNTY, TX 192ND JUDICIAL DISTRICT

FINAL JUDGMENT

TO THE HONORABLE JUDGE OF SAID COURT:

The Court, having considered Don Nelson's Application to Confirm Arbitration Award (the "Application"), Dallas Basketball Limited's Amended Response to Don Nelson's Application to Confirm Arbitration Award and Motion to Vacate Arbitration Award (the "Motion") and the Exhibits attached thereto, Don Nelson's (1) Brief in Support of Application to Confirm Arbitration Award, and (2) Opposition to Motion to Vacate, and the arguments presented by counsel at hearing, finds that the Application should be, and is hereby GRANTED in part and DENIED in part. As such Judgment is entered as follows:

Accordingly, it is hereby ORDERED, ADJUDGED, AND DECREED that the arbitration award issued on September 10, 2008, by Glenn Ashworth against Dallas Basketball Limited d/b/a Dallas Mavericks is here by CONFIRMED;

It is further hereby ORDERED, ADJUDGED, and DECREED that Plaintiff Don Nelson have and recover from Defendant Dallas Basketball Limited d/b/a Dallas Mavericks damages in the amount of $6,306,185.85;

It is further hereby ORDERED, ADJUDGED, and DECREED the Plaintiff Don Nelson have and recover from Defendant Dallas Basketball Limited d/b/a Dallas Mavericks attorneys' fees in the amount of $816,352.42;

It is further hereby ORDERED, ADJUDGED, and DECREED the Plaintiff Don Nelson have and recover from Defendant Dallas Basketball Limited d/b/a Dallas Mavericks postjudgment interest at the interest rate of 5 percent per annum, accruing from September 10, 2008, until the date this judgment is satisfied;

IT IS FURTHER ORDERED, ADJUDGED, and DECREED Plaintiff Don Nelson have and recover from Defendant Dallas Basketball Limited d/b/a Dallas Mavericks costs of the Court incurred in this cause;

It is hereby further ORDERED, ADJUDGED, and DECREED that all other relief requested by Plaintiff Don Nelson or Dallas Basketball Limited is hereby DENIED.

SIGNED at 10 o'clock a .m. on the 19 day of November, 2008.

Craig Stoffregen

JUDGE PRESIDING

CAUSE NO. 08-12340

DON NELSON,	§	IN THE DISTRICT COURT OF
	§	
Movant	§	
	§	
vs.	§	
	§	OF DALLAS COUNTY, TEXAS
DALLAS BASKETBALL, LIMITED d/b/a DALLAS MAVERICKS,	§	
	§	
	§	
Respondent	§	192nd JUDICIAL DISTRICT

DON NELSON'S (1) BRIEF IN SUPPORT OF APPLICATION TO CONFIRM ARBITRATION AWARD, AND (2) IN OPPOSITION TO MOTION TO VACATE

TO THE HONORABLE JUDGE OF SAID COURT:

Don Nelson ("Nelson") filed his application ("Application") for an order confirming the final arbitration award (the "Award") entered by a JAMS arbitrator, the Honorable Glen A. Ashworth (Ret.), against Dallas Basketball Limited d/b/a Dallas Mavericks ("Mavericks"). The Mavericks have now filed a motion to vacate ("Motion to Vacate") the Award. Nelson submits this brief in support of his Application and in response to the Motion to Vacate.

I. INTRODUCTION

The Mavericks owe Nelson over $7 million pursuant to the Award. Rather than pay it, the Mavericks have filed a frivolous Motion to Vacate in which they simply ignore the applicable law and impugn the Arbitrator without any basis in fact. The Mavericks' true motive is delay, a fact their counsel has made abundantly and repeatedly clear in his emails to Nelson's counsel:

> Thus, since the rate for postjudgment interest is much less than the cost of capital, I think the team is making a business decision. (I don't think anyone expects this to end differently than the current judgment; but apparently it is cheaper to use the money and pay later?...
>
> * * *
>
> But in the process of running all of the numbers that we got from you, I think we discovered that the team was better off paying don postjudgment interest after 2 years of appeals than paying him in full now and having to pay the price of capital.... Mark was ready to pay until the cfo showed him how that was not financially smart.

[App., Tab A, Ex. 1.][1]

> Of course, ... this [confirmation hearing] is not bringing closure, this is the start of the lovely appeal process. Closure will come, don't get me wrong, in about 18 months or so I predict. And I am sure don will get his money then (with interest).

[App., Tab A, Ex. 2.]

The Mavericks' unabashed effort to use the extremely limited procedures available for judicial review just to delay payment of the Award flies in the face of the strong public policy favoring arbitration. The Court should promptly deny the Motion to Vacate, confirm the Award, and award Nelson his attorneys' fees.

II. ARGUMENT AND AUTHORITIES

A. Standard of Review

Arbitration is favored as a means of dispute resolution, and courts indulge every reasonable presumption in favor of upholding an arbitration award. *See, e.g.,*

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[1] Evidence and documentation submitted in support of this response is contained in the Appendix filed contemporaneously herewith.

Unless otherwise indicated, all emphases are supplied by counsel.

Teleometrics Int'l, Inc. v. Hall, 922 S.W.2d 189, 193 (Tex. App.—Houston [1st Dist.] 1995, writ denied). Under both federal and state law, in the absence of a valid reason to set aside an arbitration award, a trial court must, on application of a party, confirm the award. 9 U.S.C. § 9; TEX. CIV. PRAC. & REM. CODE § 171.087. An arbitration award has the same effect as a judgment of a court of last resort and is entitled to similar deference in a court of law. *CVN Group, Inc. v. Delgado*, 95 S.W.3d 234, 238 (Tex. 2002).

The Federal Arbitration Act ("FAA") applies to arbitration cases involving interstate commerce. 9 U.S.C. § 2; *See, e.g., Roehrs v. FSI Holdings, Inc.*, 246 S.W.3d 796, 803 (Tex. App.—Dallas 2008, pet. denied). In this case, where the parties are residents of different states, the dispute involves interstate commerce and is governed by the FAA. *In re L&L Kempwood Assocs., L.P.*, 9 S.W.3d 125, 127-28 (Tex. 1999) (per curiam) (holding that where parties to the contract resided in different states, the contract involved interstate commerce and was governed by the FAA). The Mavericks do not dispute that the FAA is applicable here [Motion to Vacate at 14], although they contend the Texas Arbitration Act ("TAA") is also applicable.[2]

Where an arbitration is governed by the FAA, an award may only be vacated for the reasons stated in the FAA, and any alternative state-law grounds for vacating the award are preempted. *See JJ-CC, Ltd. v. Transwestern Pipeline Co.*, 1998 WL 788804, *4 (Tex. App.—Houston [14th Dist.] Nov. 12, 1998, no pet.) ("Because we find the Federal Act applies, we must look to the Federal grounds for vacating an award."); Vol. I,

[2] As discussed below, Nelson disagrees that the TAA provides the substantive rule of decision regarding confirming or vacating the Award. However, Nelson does agree that, while the FAA is the applicable substantive law, Texas law governs the procedures followed by this Court in confirming the Award. *See Roehrs*, 246 S.W.3d at 804.

DOMKE ON COMMERCIAL ARBITRATION, § 39:13 ("The FAA provides the **sole** basis for a judicial review where it governs....") (2006). Under the FAA, an award may be vacated only for four reasons: (1) where the award was procured by corruption, fraud, or undue means; (2) where there was evident partiality or corruption in the arbitrator; (3) where the arbitrator was guilty of misconduct in refusing to postpone the hearing; and (4) where the arbitrator exceeded his powers or so imperfectly executed them that a final award was not made. 9 U.S.C. § 10.

B. The Arbitrator Did Not Refuse to Consider Any Evidence Offered by Either Party

The Mavericks offer only one statutory ground for vacating the Award – *i.e.*, that the Arbitrator allegedly refused to consider unspecified evidence "relative to fees, interest, and present value issues." [Motion to Vacate at 16.] This is flatly false, as the Mavericks well know. The relevant facts are as follows:

1. The parties agreed to bifurcate the issue of attorneys' fees until after the Arbitrator issued an interim ruling on liability and damages. [Tr. 3-4.][3]

2. The parties stipulated to a calculation of the present value of Nelson's future deferred compensation payments, and pre-judgment interest on past-due deferred compensation, as of June 30, 2008. [App., Tab A, Ex. 3; Tr. 584-85.]

3. The evidence on liability and damages closed without the Mavericks offering any evidence relating to pre-judgment interest or discount rates.

4. After an interim award was entered in Nelson's favor, the parties agreed to submit the issue of Nelson's attorneys' fees by affidavit. [App., Tab A, Ex. 4.]

[3] The entire transcript of the arbitration hearing, including all exhibits, is attached to the Motion to Vacate.

5. Although Nelson submitted his attorneys' fees information timely, and granted the Mavericks an extension of time to submit any response or controverting affidavit, the Mavericks failed to submit any evidence at all and provided only an untimely letter brief objecting to portions of Nelson's fees. [App., Tab B.]

6. The Mavericks' counsel agreed that the record was closed on the sole remaining issue of attorneys' fees a week before the Award was issued. [App., Tab A, Ex. 5.]

7. On July 23, August 31, and September 9, 2008, Nelson's counsel provided the Arbitrator, at the Arbitrator's request, updated present value and pre-judgment interest calculations in accordance with the stipulation of the parties in the arbitration hearing. [App., Tab A, Exs. 6-8.]

8. The Mavericks never submitted any different calculations to the Arbitrator for his consideration.

The Mavericks now apparently seek to blame the Arbitrator for (1) accepting their own stipulation as to the appropriate pre-judgment interest and pre-judgment interest and value calculations, and (2) not considering an alternative calculation that they **never** provided to him, either before or after the close of the evidence. Indeed, even with the filing of the Motion to Vacate, the Mavericks still do not identify what additional "evidence" they wished to submit. This is not surprising since the Mavericks expressly told the Arbitrator they had nothing further on the bifurcated attorneys' fee issue, and they stipulated to the present value calculations.[4]

Moreover, the proper calculation of the pre-judgment interest due to Nelson, based on the undisputed facts of the amounts that were past due and when demand was made, is

[4] Although the Mavericks have never shared their alternative calculation with the Arbitrator or this Court, they did provide it to Nelson's counsel. [App., Tab A, Ex. 9.] Importantly, that calculation did not take issue with the manner in which Nelson's counsel had updated the interest or present value calculations to account for the passage of time after the arbitration hearing. Instead, it reflects that the Mavericks were seeking to ignore their prior stipulation and substitute lower damages and interest figures than they had stipulated to at and before the hearing.

purely an issue of law. The Mavericks have not identified any additional evidence that was needed, because there is none. Although the Mavericks may now dispute how the calculation should have been done – despite having stipulated to it and never having presented the Arbitrator with an alternative calculation – there was no additional evidence to present.[5] Thus, the Mavericks' argument is baseless, and the Motion to Vacate cannot be granted on the ground that the Arbitrator allegedly refused to consider relevant evidence.

C. The Award Cannot be Set Aside on the Basis of Manifest Disregard

The Mavericks also assert that the Award should be vacated under the FAA because the Arbitrator "manifestly disregarded the law." [Motion to Vacate at 16.] The United States Supreme Court recently held, however, that the four grounds for vacating an award specified in the FAA are exclusive and, therefore, rejected manifest disregard of the law as an additional ground in reviewing an award under the FAA. *Hall Street Assocs., L.L.C. v. Mattel, Inc.*, 128 S. Ct. 1396, 1402 (2008). *See also In re Poly-America, L.P.*, 262 S.W.3d 337, 362 (Tex. 2008) (Brister, J. dissenting) (noting that, after *Hall Street*, a reviewing court may not set aside an arbitration award for manifest disregard of the law); *Householder Group v. Caughran*, 2008 WL 4254586, *1-2 (E.D. Tex. Sept. 17, 2008) ("In light of the Supreme Court's holding in *Hall Street*, the court

[5] In fact, Nelson properly calculated pre-judgment interest in accordance with Texas law by taking the total damages awarded, less the future damages component, and accruing interest at the statutory rate beginning 180 days after demand was made. *See generally State Farm Mut. Auto Ins. Co. v. Norris*, 216 S.W.3d 819, 822 (Tex. 2006). Of course, even if the interest calculation were incorrect, it would not be subject to correction at this stage by the Court. *See Int'l Bank of Commerce–Brownsville v. Int'l Energy Development Corp.*, 981 S.W.2d 38 (Tex. App.—Corpus Christi 1998, pet. denied), *cert. denied*, 528 U.S. 1137 (2000) (refusing to correct erroneous post-judgment interest in arbitration award).

will limit its analysis to the statutory grounds enumerated in the FAA.") *Prime Therapeutics LLC v. Omnicare, Inc.*, 555 F. Supp. 2d 993, 999 (D.Minn. 2008) (holding that, after *Hall Street*, manifest disregard of the law is no longer a valid ground for vacating an award). Remarkably, the Mavericks present their manifest disregard argument without even acknowledging the decision in *Hall Street*, which has certainly cast doubt on, if not explicitly overruled, the cases the Mavericks do cite in the Motion to Vacate. *See Rogers v. KBR Tech. Servs. Inc.*, 2008 WL 2337184, *2 (5th Cir. June 9, 2008) (noting that *Hall Street* has called into doubt prior Fifth Circuit authority, including that cited by the Mavericks here, which recognized non-statutory grounds such as manifest disregard).

In reaching its decision in *Hall Street*, the Supreme Court focused on the fact that the FAA's text provides no flexibility when it states that an arbitration award "must" be confirmed unless one of the specific statutory exceptions applies. *Hall Street,* 128 S. Ct. at 1405. Moreover, in words that have particular relevance to the approach taken by the Mavericks in the Motion to Vacate, the Court explained that the strict statutory terms are consistent with the underlying policy of the FAA:

> Instead of fighting the text, it makes more sense to see the three provisions, §§ 9-11, as substantiating a national policy favoring arbitration with just the limited review needed to maintain arbitration's essential virtue of resolving disputes straightaway. Any other reading opens the door to full-bore legal and evidentiary appeals that can 'rende[r] informal arbitration merely a prelude to a more cumbersome and time-consuming judicial review process,' ... and bring arbitration theory to grief in post-arbitration process.

Id. (quoting *Kyocera Corp. v. Prudential-Bache Trade Servs., Inc.*, 341 F.3d 987, 998 (9th Cir. 2003), *cert. dism'd,* 540 U.S. 1098 (2004)).

Of course, that is exactly what the Mavericks seek to do here. And, to make matters worse, the Mavericks want to drag Nelson through this full-blown review of the entire arbitration, while at the same time acknowledging that they know the result will not change. As *Hall Street* recognizes, this type of *de novo* review is so inconsistent with the text and purpose of the FAA that the manifest disregard line of cases cannot stand.

1. The Mavericks Cannot Demonstrate Manifest Disregard in any Event.

Even if manifest disregard survived *Hall Street,* it cannot save the Mavericks. With their Motion to Vacate, which simply regurgitates their post-hearing brief submitted to the Arbitrator, the Mavericks act as if manifest disregard merely means that the Court should re-try the case to see if it comes to the same result. That is not, however, the manifest disregard standard as it was ever articulated by any court. As the very cases cited by the Mavericks make clear, the manifest disregard standard was an "extremely narrow, judicially-created rule with limited applicability." *Prestige Ford v. Ford Dealer Computer Serv., Inc.*, 324 F.3d 391, 395-96 (5th Cir.), *cert. denied,* 540 U.S. 878 (2003). Although its boundaries were never well defined, "'it clearly mean[t] more than an error or misunderstanding with respect to the law.'" *Id.* at 395 (quoting *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Bobker*, 808 F.2d 930, 933-34 (2nd Cir. 1986)).

Indeed, as the Seventh Circuit had explained the manifest disregard standard prior to *Hall Street:*

> It is tempting to think that courts are engaged in judicial review of arbitration awards under the Federal Arbitration Act, but they are not. When parties agree to arbitrate their disputes they opt out of the court system, and when one of them challenges the resulting arbitration award he perforce does so not on the ground that the arbitrators made a mistake but that they violated the agreement to arbitrate, as by corruption, evident partiality, exceeding their powers, etc.—conduct to which the parties did not consent when they included an arbitration clause in their contract. **That is why in the typical arbitration ... the issue for the court is not whether the contract interpretation is incorrect or even wacky but whether the arbitrators had failed to interpret the contract at all, for only then were they exceeding the authority granted to them by the contract's arbitration clause.**

Wise v. Wachovia Secs., LLC, 450 F.3d 265, 269 (7th Cir.) (citations omitted), *cert. denied,* 127 S. Ct. 582 (2006).

The Mavericks do not even attempt to show how they can meet this standard. They merely ask the Court to find that the Arbitrator got it wrong. Even if that were true, which it is not,[6] it would not be enough to vacate the Award. The Arbitrator provided a cogent and well-reasoned opinion in support of the Award, in which he interpreted and applied the settled legal principles cited by both parties to the particular facts of this case. Even under the prior law of manifest disregard, no case has ever held that standard was met in circumstances even remotely similar to these.

[6] Nelson will not here respond at length to the Mavericks' legal arguments regarding the breach of contract claim decided by the Arbitrator. To the extent the Court has any desire to see for itself, however, how solid a footing the Award stands on, Nelson has included in the Appendix to this brief all of the post-hearing briefing submitted by both parties in the arbitration. [App., Tabs C-F.]

D. The Award Cannot Be Set Aside On the Basis of Gross Mistake

The Mavericks also argue that the Award should be set aside under the TAA based on "gross mistake." As noted above, Nelson disputes that the TAA can be applied to set aside an Award that is enforceable under the FAA. Even if the substantive provisions of the TAA were applicable, however, they would not support the Mavericks' argument for two reasons.

First, as with the Mavericks' analysis of federal law, the Motion to Vacate ignores very recent, controlling authority from the Dallas Court of Appeals on the continued viability of the gross mistake standard. In *Quinn v. Nafta Traders, Inc.*, 257 S.W.3d 795 (Tex. App.—Dallas 2008, pet. filed), the Court of Appeals adopted the reasoning of *Hall Street* to hold that, even if parties contractually agree to expanded judicial review procedures, they are limited to the statutory grounds for vacating an arbitration award that are enumerated in the TAA. *Id.* at 798-99. As the court explained, these statutory grounds "reflect severe departures from an otherwise proper arbitration process and are of a completely different character than ordinary legal error." *Id.* at 798. Under the governing appellate case law, therefore, the Mavericks' argument that the Arbitrator made a mistake – even a "gross mistake" – is not a ground to set aside the Award.

Second, even if the gross mistake were still viable, it would not apply. Prior Texas case law held that a gross mistake was one that implied bad faith and failure to exercise honest judgment. *Teleometrics*, 922 S.W.2d at 193. Thus, an arbitrator's failure to correctly interpret a contract is not sufficient to show gross mistake, even if coupled with

a failure to correctly apply the law. *Universal Computers Systems, Inc. v. Dealer Solutions, L.L.C.*, 183 S.W.3d 741, 753 (Tex. App.—Houston [1st Dist.] 2005, pet. denied), *cert. denied,* 127 S.Ct. 584 (2006); *see also Crossmark, Inc. v. Hazar*, 124 S.W.3d 422, 434 (Tex. App.—Dallas 2004, pet. denied) ("Any alleged errors by the arbitrators in applying the substantive law are not subject to review in the courts."). In *Universal Computers*, the party challenging the award alleged that the arbitrators misconstrued the parties' agreement in a manner that was "absurd," failed to correctly apply well-settled Texas law regarding trademarks, and made a multitude of other legal and factual errors. *Universal Computers*, 183 S.W.3d at 753. The court of appeals declined to even address the substance of these arguments, however, because they called for the court to review the legal and factual determinations of the arbitrators, and were therefore not proper grounds to vacate the award. *Id.*

Likewise here, the Mavericks are simply re-arguing the case and asserting that the Arbitrator erred. The Mavericks are wrong, but that is not really the point. The Mavericks cannot with a straight face contend that the Arbitrator's decision was so obviously and grossly mistaken that it can only be viewed as evidence of his bad faith or dishonesty. Thus, the gross mistake ground of the Motion to Vacate fails for this reason as well.

E. Nelson Is Entitled to His Fees and Costs

Finally, Nelson is entitled to an award of his attorneys' fees on two grounds. First, Nelson is entitled to receive attorneys' fees under the express terms of the parties' agreement. *See Crossmark,* 124 S.W.3d at 436 (finding that a trial court may not award

additional attorneys' fees when confirming the award unless provided for in the parties' agreement). Indeed, the agreement provides that:

> If either party hereto commences *any action or proceeding* in connection with or to interpret any term or provision of this Agreement, the prevailing party shall be entitled to receive from the losing party such prevailing party's actual attorneys' fees and costs incurred in connection therewith (emphasis added).

Texas courts have held that contractual language like this supports an award of attorneys' fees in connection with an application to confirm an arbitration award. *See Mytech Corp. v. Ausman*, 1999 WL 230942, *7 (Tex. App.—Austin April 22, 1999, pet. denied).

Second, as discussed above, the Mavericks' grounds for attacking the Award are frivolous, and Nelson is entitled to recover his attorneys' fees for this reason as well. Under the FAA, the prevailing party in a confirmation proceeding is entitled to an award of fees when the losing party's grounds for challenging the arbitration award are "without merit" and their refusal to abide by the award on the grounds raised are "without justification." *See Executone Info. Sys., Inc. v. Davis*, 26 F.3d 1314, 1331 (5th Cir. 1994). It is difficult to imagine a case in which it was more obvious that the losing party in arbitration lacked any justification for abiding by the award, and was instead simply refusing to pay for the sake of delay. Accordingly, for this reason too, Nelson is entitled to an award of his attorneys' fees and costs.

III. CONCLUSION

Nelson requests that the Award be confirmed and a final judgment entered in conformity therewith, that the Motion to Vacate be denied in its entirety and that the

Court award him his reasonable and necessary attorneys' fees, both in this Court and on appeal, if any, costs of court, pre- and post-judgment interest at the highest lawful rate, and such other and further relief to which he shows himself justly entitled.

Respectfully submitted,

FIGARI & DAVENPORT, L.L.P.

By: _____

Mark T. Davenport
State Bar No. 05418000
Don Colleluori
State Bar No. 04581950
Ryan K. McComber
State Bar No. 24041428

3400 Bank of America Plaza
901 Main Street, LB 125
Dallas, Texas 75202-3796
Tel: 214/ 939-2000
Fax: 214/ 939-2090

ATTORNEYS FOR MOVANT
DON NELSON

CERTIFICATE OF SERVICE

On the 14th day of November, 2008, the foregoing instrument was served via email and hand delivery upon all counsel of record.

_____
for Ryan K. McComber

Don Colleluori

From: Geoffrey Harper [harper@fr.com]
Sent: Tuesday, September 09, 2008 6:18 PM
To: Don Colleluori
Subject: Re: Nelson v. Mavericks (No. 1310016794)

Actually, I think it was neither. He did not want a concession. But in the process of running all of the numbers that we got from you, I think he discovered that the team was better off paying don postjudgment interest after 2 years of appeals than paying him in full now and having to pay the price of capital. That led to a discussion with me last night about whether don would take a haircut to true up the numbers (I.e. Make it at least neutral for the team). I told them what we had discussed (I.e. Don is more interested in the principal of the judgment than cash now and he would rather wait and get it all). So I was asked to get the bond number and, proving that the rich get richer, it appears that banks do bonds for free when you have 1 billion in the bank. That being said, they still need a number.

Anyway, sorry for the length of the email, but I do want you to know that I was not yanking you around on friday. Mark was ready to pay until the cfo showed him how that was not financially smart. No concessions have been -- or will be -- requested (at least from me). I think don has made his position very clear and, quite frankly, I respect that. No need to waste time on that trail.

Sent from my BlackBerry Wireless Handheld

From: Don Colleluori
To: Geoffrey Harper
Sent: Tue Sep 09 17:40:39 2008
Subject: RE: Nelson v. Mavericks (No. 1310016794)

I understand that your client has the resources to do what he wants on this issue. I was just pointing out the abrupt change in your orders from how you were told to pitch it to me last week. "It's not a negotiation, we just want to make sure we've got the right number and then Mark's ready to cut a check. ... Oh, never mind, I was trying to negotiate some concession after all."

From: Geoffrey Harper [mailto:harper@fr.com]
Sent: Tuesday, September 09, 2008 5:06 PM
To: Don Colleluori
Subject: Re: Nelson v. Mavericks (No. 1310016794)

I just follow orders . . .

Based on the last comments from on high, I think he was prepared to negotiate a quick payment. However, I told him that, based on everything I have seen and heard from y'all, don was not even remotely interested in negotiating anything and would not compromise a penny. Thus, since the rate for postjudgment interest is much less than the cost of capital, I think the team is making a business decision. (I don't think anyone expects this to end differently than the current judgment; but apparently it is cheaper to use the money and pay later? I am not sure I understand it to be candid.)

Sent from my BlackBerry Wireless Handheld

From: Don Colleluori
To: Geoffrey Harper
Sent: Tue Sep 09 16:46:18 2008

Subject: RE: Nelson v. Mavericks (No. 1310016794)

Does this also fall in the category of you're not trying to negotiate a concession?

From: Geoffrey Harper [mailto:harper@fr.com]
Sent: Tuesday, September 09, 2008 4:44 PM
To: Don Colleluori
Subject: Re: Nelson v. Mavericks (No. 1310016794)

Can you have someone there do the math re what bond you want posted during the appeal of this? I assume we will agree on it, but might as well let you decide what you think will protect you for the next year or so
---
Sent from my BlackBerry Wireless Handheld

From: Don Colleluori
To: Moyer Megan
Cc: Geoffrey Harper; Thomas Melsheimer; John O'Connor ; Mark T. Davenport ; Ryan McComber
Sent: Tue Sep 09 16:11:09 2008
Subject: Nelson v. Mavericks (No. 1310016794)

Megan, pursuant to Judge Ashworth's request, the following is the damages calculation, utilizing the same methodology as the interim award, updated to September 10, 2008.

Past due deferred compensation through 9/10/08	$2,041,667
Prejudgment Interest ($279.68 per diem) through 9/10/08	164,172.40
Present Value of Future Payments	4,100,346.45
Total Due on 9/10/08:	**$6,306,185.85**

Please let me know if you have any questions.

Don Colleluori

Don Colleluori

From: Geoffrey Harper [harper@fr.com]
Sent: Saturday, November 08, 2008 4:28 PM
To: Mark T. Davenport; Andrew R. Graben; Don Colleluori
Subject: Re: Mavericks/Nelson: Hearing Continuance

Ok. I will come back from the indian princess campout early and get something together. Of course, mark, this is not bringing closure, this is the start of the lovely appeal process. Closure will come, don't get me wrong, in about 18 months or so I predict. And I am sure don will get his money then (with interest).

Just stinks for me and the kids this weekend. But que sera. (Thank goodness I checked my bb while the firls were napping, eh?)

Sent from my BlackBerry Wireless Handheld

From: Mark T. Davenport
To: Andrew R. Graben; Don Colleluori
Cc: Geoffrey Harper
Sent: Fri Nov 07 16:28:41 2008
Subject: RE: Mavericks/Nelson: Hearing Continuance

No we will not. There is no good faith basis for the Mavericks' refusal to pay this award, and it's time to bring closure to the case.

Mark T. Davenport
Figari & Davenport, LLP
901 Main Street
3400 Bank of America Plaza
Dallas, Texas 75202
Tel: 214/939-2002
Fax: 214/939-2090
www.figaridavenport.com

From: Andrew R. Graben [mailto:Graben@fr.com]
Sent: Friday, November 07, 2008 4:19 PM
To: Mark T. Davenport; Don Colleluori
Cc: Geoffrey Harper
Subject: Mavericks/Nelson: Hearing Continuance

Mark & Don,

I write regarding the hearing in the Mavericks/Don Nelson matter set for Monday, November 10th. Geoff has been in trial for the past three weeks and just finished this afternoon. Consequently, he is only now able to turn his attention to Application to Confirm Arbitration Award and the hearing.

In light of this, will you agree to a continuance of Monday's hearing? We will be willing to reset the hearing as

soon as possible, but Geoff needs a bit more time to get up to speed on this issue.

Thanks,
Andrew

Andrew R. Graben

~ Fish & Richardson P.C.
1717 Main Street
Suite 5000
Dallas, TX 75201
Direct Dial: (214)760-6106
Fax: (214) 747-2091
Email: graben@fr.com

www.fr.com