

AMERICAN ARBITRATION ASSOCIATION
Employment Arbitration Tribunal

In the Matter of the Arbitration between

Re: 12 166 00536 10

John Thomas, M.D.;

and

The Hand Center of Western Connecticut, LLC

and Lionel G. Brown, M.D. and John G. Lunt, M.D.;

Claimant

Respondents

FINAL AWARD OF ARBITRATOR

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the Employment Agreement between the Claimant and the Respondents (*See* Cl. Exh. 2, ¶13) and the employment rules of the American Arbitration Association, and having been sworn and having heard and evaluated the evidence and the arguments by the parties and their counsel at hearings in Danbury, and New Haven, Connecticut, and having received and considered post-hearing memoranda, exhibits, and authorities, and having entered an Interim Award on December 12, 2012, and having received and considered post award memoranda relative to damages and having heard further oral argument on April 19, 2013, now enters a Final Award of Damages.

: A recitation of the facts is unnecessary and reference is hereby made to the Interim Award for a review of the findings made therein.

After having reviewed all of the evidence, the post-hearing briefs, the briefs submitted in response to the Interim Award, and having heard extensive oral argument from counsel, I
AWARD as follows:

RESPONDENTS SHALL PAY CLAIMANT THE SUM OF
\$563,862.70 CONSISTING OF:

- | | |
|---|-----------------------------------|
| 1. Wrongfully withheld bonus wages | \$100,000.00 |
| 2. Double damages pursuant to
Sec. 31-72 of the Conn. Gen. Statutes | \$100,000.00 |
| 3. Pension Contribution Not Returned | \$11,324.00 |
| 4. Fees and Costs in connection with this Arbitration: | |
| • Clendenen & Shea (Fees)
(Attorneys for Claimant) | \$300,000.00 |
| • Weiner Mantell & Farnes
(Attorneys for Claimant) | \$5,800.00 |
| • Apicella, Testa & Co.
(CPAs) | \$38,000.00 |
| • Robert Petrini & Assoc.
(Real Estate Appraiser) | \$500.00 |
| • Clendenen & Shea (Costs)
(Attorneys for Claimant) | <u>\$8,238.70</u>
\$563,862.70 |
| 5. Interest is awarded at 4.5% from 01/21/10 to date of Payment -
(to be calculated by the parties). | |

Conn. Gen. Stat. §31-72 permits recovery of reasonable attorney's fees and costs where an employer makes arbitrary, unreasonable and bad faith decisions to withhold bonuses clearly due an employee.

While there can be disagreement as to whether or not Drs. Brown and Lunt acted in "bad faith" or in an arbitrary manner, they certainly were unreasonable in their withholding of Dr. Thomas' bonuses and in their failure to instruct Mr. Teplitzky to calculate Dr. Thomas' bonuses during the period of his employment. Thus, the undersigned finds that the Respondents acted unreasonably in failing to pay Dr. Thomas his bonuses.

Mr. Teplitzky is a very competent CPA, but it is clear that he took direction from the Respondents. Mr. Zaprzalka conducted a more independent review.

It should be noted that the issues in this matter were made more complicated for counsel, the accountants, and the undersigned because of the failure of the Respondents to instruct Mr. Teplitzky to conduct the contractually mandated quarterly accountings.

Because of this failure, Mr. Zaprzalka was required to obtain and then review a report from the billing manager detailing cash collections by each partner on a monthly basis. This was the report that he used to determine the bonuses due Dr. Thomas in 2009 and 2010.

Mr. Teplitzky chose to use the Fees and Collections by Provider Reports that did not include detailed information on the surgical procedures performed. No explanation was ever furnished as to why the reports, which summarized the same data, reached different totals.

Counsel for Respondents argued that Mr. Teplitzky was the final arbiter as to how income and expenses would be treated and that the authority to make those allocations was vested solely in him. The undersigned rejects the notion that Mr. Teplitzky was the "final word" and that his decision(s) on income and expenses were not subject to question, even if found to be incorrect.

Accordingly, I, AWARD, as follows:

1. See Paragraphs 1 through 5;
2. The administrative fees of the American Arbitration Association totaling \$6,650.00 and the compensation of the arbitrator totaling \$60,500.00 shall be borne equally by the parties.
3. All claims not expressly granted herein are hereby, denied.

For all of the foregoing reasons and for those set forth in the Interim Award, an Award of \$563,862.70 plus interest is made and is SO ORDERED.

This AWARD is in full settlement of all claims submitted to this Arbitration.

I, Hon. Alan H. Nevas, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument which is my Award.

Date: June 12, 2013



Hon. Alan H. Nevas