

EXHIBIT 2
TO DECLARATION OF O'CONNOR

1 ARBITRATION NO. 1310016794

2 DON NELSON,)

3 Claimant/
4 Counterrespondent)

5 vs.)

6 DALLAS BASKETBALL LIMITED d/b/a
7 DALLAS MAVERICKS,)

8 Respondent/
9 Counterclaimant.)

CIVIL
ARBITRATION
PENDING BEFORE
JAMS

10 ORAL DEPOSITION OF

11 FLOYD JAHNER

12 May 29th, 2008

13 *****

14 ANSWERS AND VIDEOTAPED DEPOSITION of

15 FLOYD JAHNER, taken at the instance of the

16 Claimant/CounterRespondent, on the 29th day of May,

17 A.D., 2008, between the hours of 11:10 a.m. and 3:08

18 p.m., in the above styled and numbered cause at the

19 offices of Fish & Richardson, 1717 Main Street, 50th

20 Floor, in Dallas, Dallas County, Texas, before Jerry L.

21 Callaway, RDR, a Certified Shorthand Reporter in and

22 for the State of Texas, pursuant to the Arbitration

23 Rules and the provisions stated on the record.

24

25

A P P E A R A N C E S

APPEARING FOR THE CLAIMANT/COUNTERRESPONDENT:

Mr. Don Colleluori
Mr. Ryan K. McComber
FIGARI & DAVENPORT, L.L.P.
901 Main Street, Suite 3400
Dallas, Texas 75202

APPEARING FOR THE RESPONDENT/COUNTERCLAIMANT:

Mr. Geoffrey S. Harper
FISH & RICHARDSON, P.C.
1717 Main Street, Suite 5000
Dallas, Texas 75201

ALSO APPEARING

Mr. Matt Harmel, Videographer

11:09:48 1

P-R-O-C-E-E-D-I-N-G-S

11:09:48 2

THE VIDEOGRAPHER: Today's date is May

11:10:08 3

29th, 2008. We are on the record at 11:10 a.m. Please

11:10:12 4

be advised that anytime we are on the video record, the

11:10:16 5

microphones will be on and recording audio. Will the

11:10:20 6

court reporter please swear the witness.

7

FLOYD JAHNER,

8

having been first duly sworn, testified as follows:

9

EXAMINATION

11:10:31 10

BY MR. COLLELUORI:

11:10:31 11

Q. Would you give us your full name, please?

11:10:33 12

A. Floyd Jahner.

11:10:35 13

Q. Mr. Jahner, my name's Don Colleluori. I

11:10:42 14

represent Don Nelson in a lawsuit pending between

11:10:45 15

Mr. Nelson and Dallas Basketball, Limited, d/b/a Dallas

11:10:49 16

Mavericks; do you understand that?

11:10:50 17

A. Yes.

11:10:50 18

Q. And you understand you are giving your

11:10:54 19

deposition in that arbitration matter today?

11:10:56 20

A. Yes.

11:10:57 21

Q. And you understand your deposition here is

11:10:59 22

under oath?

11:10:59 23

A. Yes.

11:11:00 24

Q. Same penalties for perjury apply in this

11:11:03 25

deposition as if you were in a court of law?

11:11:05 1 A. Correct.

11:11:07 2 Q. And do you understand generally the purpose of
11:11:10 3 a deposition?

11:11:11 4 A. Yes.

11:11:11 5 Q. Have you given depositions before?

11:11:15 6 A. Once.

11:11:15 7 Q. Do you understand I am going to ask you a
11:11:17 8 series of questions about this dispute, and you are
11:11:19 9 supposed to give me as complete and accurate and
11:11:21 10 truthful answers as you can?

11:11:22 11 A. Yes.

11:11:22 12 Q. If during the course of my questioning I ask
11:11:25 13 you something that's not clear to you, would you please
11:11:27 14 stop me and ask me to repeat or clarify it?

11:11:30 15 A. Yes.

11:11:30 16 Q. Did you have a chance to prepare for your
11:11:38 17 deposition in visiting with counsel?

11:11:40 18 A. I did visit with counsel yesterday, yes.

11:11:43 19 Q. Other than your visit with counsel, did you
11:11:45 20 visit with any other of the people who have knowledge
11:11:49 21 of the facts in this case to try to refresh your
11:11:55 22 recollection?

11:11:55 23 A. No, I guess yesterday at prep Lisa Tyner was
11:12:01 24 there, too.

11:12:02 25 Q. You were there together?

11:12:03 1 A. Yes.

11:12:03 2 Q. Did you review any documents to prepare for
11:12:06 3 your deposition?

11:12:07 4 A. I did. I glanced at, you know, some of the
11:12:11 5 e-mails just to try to refresh some of the dates and
11:12:15 6 things like that.

11:12:15 7 Q. Were there any particular e-mails you were
11:12:17 8 focused on in going through your preparation?

11:12:19 9 A. No.

11:12:19 10 Q. Any that you can recall as you sit here now
11:12:25 11 that you reviewed in the last few days to prepare?

11:12:28 12 A. I think just some -- I guess nothing in
11:12:33 13 particular, mostly just that, was it July, August time
11:12:39 14 frame of 2006.

11:12:42 15 Q. Okay. You're employed by Dallas Basketball,
11:12:50 16 Limited, doing business as Dallas Mavericks, correct?

11:12:52 17 A. Yes.

11:12:52 18 Q. And if we refer it them as the Mavericks, you
11:12:55 19 will understand who I am talking about?

11:12:57 20 A. Yes.

11:12:57 21 Q. How long have you been employed by the
11:12:59 22 Mavericks?

11:13:01 23 A. 2001.

11:13:06 24 Q. And what position do you have with the
11:13:10 25 Mavericks?

11:13:10 1 A. CFO.

11:13:14 2 Q. Have you held that position since 2001?

11:13:16 3 A. Yes.

11:13:16 4 Q. Approximately when in 2001?

11:13:24 5 A. April.

11:13:29 6 Q. As CFO, can you describe generally for us what

11:13:33 7 your duties and responsibilities are?

11:13:35 8 A. Just responsibility for the financial

11:13:37 9 statements and accounting of the Mavericks.

11:13:46 10 Q. Do you have -- excuse me, do you have a

11:13:47 11 position with any other companies affiliated with

11:13:52 12 Mr. Cuban other than the Mavericks?

11:13:55 13 A. Yes, treasurer of the Dallas Mavericks

11:13:59 14 Foundation.

11:14:02 15 Q. Any other companies?

11:14:04 16 A. No.

11:14:08 17 Q. Is the Mavericks foundation a charitable

11:14:12 18 foundation?

11:14:12 19 A. Correct.

11:14:18 20 Q. How big a staff do you have as CFO?

11:14:28 21 A. Seven.

11:14:32 22 Q. Do they all report directly to you, or is

11:14:35 23 there a hierarchy?

11:14:39 24 A. Primarily all to me, there is, you know, one

11:14:42 25 or two positions that kind of report up through like

11:14:45 1 AP. There is a clerk and a supervisor, so -- it's a
11:14:52 2 small staff.

11:14:52 3 Q. Ms. Tyner reports directly to you?

11:14:56 4 A. Yes.

11:14:56 5 Q. And she is in charge of payroll?

11:14:59 6 A. Yes.

11:15:04 7 Q. Do you use outside accounting firms for the
11:15:07 8 Mavericks' financial statements and accounting as well?

11:15:10 9 A. Yes.

11:15:10 10 Q. What outside accounting firm do you use?

11:15:13 11 A. Ernst & Young.

11:15:16 12 Q. How long have you been using Ernst & Young?

11:15:23 13 A. Since I have been there, and I'm not sure, you
11:15:26 14 know, previous to that, --

11:15:27 15 Q. Okay.

11:15:27 16 A. -- but since I've been there.

11:15:34 17 Q. What was your work background before you came
11:15:36 18 to the Mavericks in 2001?

11:15:39 19 A. I worked for Ernst -- Ernst & Young on the
11:15:54 20 internal -- our internal finance and accounting side
11:15:55 21 over there, just policy and procedures.

11:15:56 22 Q. Internal finance and what?

11:15:58 23 A. Accounting.

11:15:59 24 Q. I am not familiar with that. What does that
11:16:01 25 mean, in an accounting firm?

13:38:39 1 couple.

13:38:40 2 Q. Okay. And was your purpose in talking to
13:38:42 3 Mr. Hart because you wanted legal counsel on what was
13:38:47 4 going on?

13:38:48 5 A. Correct.

13:38:50 6 Q. Anyone else other than Mr. Hart?

13:39:04 7 A. Well, eventually Don Nelson, I think, again, I
13:39:08 8 believe that comes back and, you know --

13:39:10 9 Q. Okay. I am talking about before we get to
13:39:13 10 there.

13:39:14 11 A. Before we get to there, no, just Mark and
13:39:16 12 Robert.

13:39:17 13 Q. So at the end of the e-mail trail in Exhibit
13:39:23 14 11, Mr. Cuban tells you, "go ahead and pay him the
13:39:27 15 money"?

13:39:28 16 A. Correct.

13:39:28 17 Q. Okay. Did you get any further direction about
13:39:32 18 what to do after that before you then next talked to
13:39:37 19 Mr. Nelson?

13:39:47 20 A. Not that I recall, no.

13:39:49 21 Q. Okay. What did you do next?

13:39:51 22 A. I called Mr. Nelson.

13:39:54 23 Q. And tell me what was said in that
13:39:58 24 conversation, as best you can recall it.

13:40:01 25 A. Because there was such a discrepancy in the

13:40:04 1 view of their conversation, I just decided to ask
13:40:10 2 Nellie, is there, you know -- is there room -- you know
13:40:14 3 what I mean? I just wanted to ask if there was any
13:40:18 4 room to take any less, make both sides happy yet, but
13:40:23 5 obviously there was a large variance in what was, you
13:40:25 6 know, discussed, or a large interpretation difference
13:40:27 7 in what was discussed.

13:40:30 8 And Nellie said "No." And I said,
13:40:37 9 "Fine." I said, "Mark has agreed to pay the money, you
13:40:41 10 know, so, you know, we would pay it."

13:40:46 11 And then Nellie offered, "I wouldn't
13:40:55 12 necessarily take less, but if I could get a lump sum,
13:40:58 13 you know, cash versus the payout, I might be interested
13:41:01 14 in that."

13:41:05 15 I said "Make -- make an offer."

13:41:09 16 And he said "500,000."

13:41:13 17 And I said, I don't know, but I would
13:41:16 18 take it to Mark, and I would ask him if he's willing to
13:41:19 19 do that. And then pretty much ended -- excuse me,
13:41:25 20 ended the call.

13:41:26 21 Q. Okay. And then if you look at Exhibit 13, is
13:41:39 22 that your e-mail exchange with Mr. Cuban --

13:41:45 23 A. With Mark, yes.

13:41:47 24 Q. -- Mr. Cuban about that telephone call and the
13:41:49 25 proposal to do --

13:41:50 1 A. Correct.

13:41:51 2 Q. -- \$500,000 lump sum?

13:41:53 3 A. Correct.

13:41:58 4 Q. Just reading your e-mail there on Exhibit 13,
13:42:03 5 it seems to suggest that the specific \$500,000 figure
13:42:08 6 hadn't been something that Mr. Nelson had offered at
13:42:15 7 that point since you said I think he will agree to
13:42:17 8 that --

13:42:18 9 A. Right.

13:42:19 10 Q. -- and then it would go away.

13:42:22 11 A. I guess what I am saying is, if we came back
13:42:25 12 with it, maybe I said, I think he would agree.
13:42:27 13 That's -- based on his offer, I think he would agree to
13:42:30 14 take that cash payment, you know, if it was, you know,
13:42:36 15 done.

13:42:36 16 Q. Okay. It may not be a huge issue. It just
13:42:41 17 seemed like reading this it seemed like the concept of
13:42:44 18 a lump sum came up in the first conversation, and you
13:42:47 19 got some idea of what it might take, but that a
13:42:50 20 specific number hadn't been thrown out there by
13:42:53 21 Mr. Nelson. Is that --

13:42:55 22 A. I asked Mr. Nelson what number. I wasn't
13:42:58 23 going to throw out the first offer, so you want cash,
13:43:01 24 how much cash do you want. He threw out the 500,000.

13:43:05 25 Q. Okay. And then Mr. Cuban sends you back an

13:43:09 1 e-mail and says, "agreed, go ahead and do it"?

13:43:11 2 A. Correct.

13:43:11 3 Q. Is, again, this your only communication with
13:43:18 4 Mr. Cuban at this point about whether or not to do a
13:43:23 5 lump sum payment, how to structure it, or anything like
13:43:27 6 that?

13:43:29 7 A. Correct.

13:43:31 8 Q. Okay. You sort of referred to a moment ago, I
13:43:37 9 just want to be clear, was it your idea to approach
13:43:41 10 Mr. Nelson about taking something less and opening --

13:43:46 11 A. Yes.

13:43:46 12 Q. -- up this negotiation?

13:43:47 13 A. Yes, it was.

13:43:48 14 Q. Okay. After Mr. -- well, strike that.

13:44:02 15 Did you talk about this concept on the
13:44:04 16 27th with anyone other than your -- via e-mail to
13:44:10 17 Mr. Cuban with a copy to Mr. Hart, or I guess Mr. Cuban
13:44:16 18 copied Mr. Hart?

13:44:18 19 A. I would guess, again, that there is probably
13:44:22 20 discussions with Mr. Hart, you know, regarding, you
13:44:29 21 know, if there is any other issues in amending it as
13:44:32 22 such.

13:44:34 23 Q. Okay. I am going to get in a minute to what
13:44:36 24 happens after this Mr. Cuban agreed, but up to this
13:44:39 25 point getting Mr. Cuban to agree, did you go to

15:06:50 1 A. By the team once termination, you elect the --

15:06:55 2 Q. A different payout?

15:06:57 3 A. A different payout, yes.

15:06:59 4 Q. And that's what the Mavericks did in that
15:07:01 5 case?

15:07:01 6 A. Correct.

15:07:02 7 Q. When they waived him, that terminates the
15:07:04 8 contract, and they left the different payout schedule?

15:07:07 9 A. Correct.

15:07:09 10 Q. Any other instances where you have been
15:07:12 11 involved in anything other than simply doing the
15:07:15 12 routine accounting for the deferred compensation?

15:07:19 13 A. Nothing. There is, like -- there is a couple
15:07:22 14 other players, also; but it's routine based on what was
15:07:26 15 there. Some have been long gone and just there is a
15:07:29 16 long payout schedule. They are still being paid today.

15:07:33 17 Q. But nothing along the lines of your
15:07:37 18 involvement in negotiating a possible buyout of
15:07:40 19 Mr. Nelson's consulting and that sort of thing?

15:07:44 20 A. Nothing, no.

15:07:44 21 Q. You typically are just not involved in that;
15:07:48 22 is that right?

15:07:48 23 A. Correct.

15:07:49 24 MR. COLLELUORI: That's all I've got.

15:07:50 25 Thank you.

15:07:51 1

MR. HARPER: Nothing from us.

15:07:54 2

THE VIDEOGRAPHER: The time is 3:08. We

15:07:56 3

are now off the record.

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PAGE	LINE	CHANGE	REASON
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[illegible]

1 I, FLOYD JAHNER, have read the foregoing
2 deposition and hereby affix my signature that same is
3 true and correct, except as noted above.
4

5 _____
6 FLOYD JAHNER

7 THE STATE OF _____)

8 COUNTY OF _____)

9 Before me, _____, on this
10 day personally appeared FLOYD JAHNER, known to me (or
11 proved to me under oath or through _____)
12 (description of identity card or other document) to be
13 the person whose name is subscribed to the foregoing
14 instrument and acknowledged to me that they executed
15 the same for the purposes and consideration therein
16 expressed.

17 Given under my hand and seal of office
18 this _____ day of _____, 2008.
19
20

21 _____
22 NOTARY PUBLIC IN AND FOR

23 THE STATE OF _____
24
25

1 COUNTY OF DALLAS)

2 STATE OF TEXAS)

3 I, Jerry L. Callaway, RDR, certified
4 shorthand reporter in and for the State of Texas, do
5 hereby certify that the facts as stated by me in the
6 caption hereto are true; that there came before me the
7 aforementioned named person, who was by me duly sworn
8 to testify the truth concerning the matters in
9 controversy in this cause; and that the examination was
10 reduced to writing by computer transcription under my
11 supervision; that the deposition is a true record of
12 the testimony given by the witness.

13 I further certify that I am neither
14 attorney or counsel for, nor related to or employed by,
15 any of the parties to the action in which this
16 deposition is taken, and further that I am not a
17 relative or employee of any attorney or counsel
18 employed by the parties hereto, or financially
19 interested in the action.

20 Given under my hand and seal of office on
21 this, the 6th day of June, A.D., 2008.

22
23 Jerry L. Callaway, RDR, CSR 948
24 Expiration Date: 12/31/2008
25 Firm Registration No. 209
5220 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270
(214) 855-5300