

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Rice Financial Products Company

Case Number: 15-02780

vs.

Respondents
Bonwick Capital Partners, LLC
Burnham Securities Inc.
Devin Wicker
Ray Gatten
Phillip Toth
Rashaun Williams
Carol Mackoff
Kenneth Bruce
Stacy Alymeda

Hearing Site: New York, New York

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: Member vs. Members and Associated Persons

The evidentiary hearings were conducted partially by videoconference.

REPRESENTATION OF PARTIES

For Claimant Rice Financial Products Company: Lisa-Sheri Torrence, Esq., Rice Financial Products Company, New York, New York.

For Respondents Bonwick Capital Partners, LLC (“Bonwick”) and Devin Wicker (“Wicker”): Marc Jonas Block, Esq., The Law Offices of Marc Jonas Block, P.C, New York, New York.

Respondent Burnham Securities Inc. (“Burnham”) did not enter an appearance in this matter.

For Respondents Ray Gatten (“Gatten”) and Phillip Edward Toth (“Toth”): H. Stephen Brown, Esq., The Brown Law Firm, PLC, Memphis, Tennessee.

For Respondents Kenneth Bruce, Jr. (“Bruce”) and Carol Lewis Mackoff (“Mackoff”): Sara Margolis, Esq., MoloLamken, New York, New York.

Respondent Stacy Alymeda (“Alymeda”) did not enter an appearance in this matter.

Respondent Rashaun Williams (“Williams”) appeared pro se.

CASE INFORMATION

Statement of Claim filed on or about: October 20, 2015.

Answer to Respondents’ Counterclaims filed on or about: November 19, 2015.

Amended Statement of Claim filed on or about: March 3, 2017.

Answer to Respondents Mackoff and Bruce’s Counterclaims filed on or about January 30, 2018.

Rice Financial Products Company signed the Submission Agreement: October 20, 2015.

Joint Statement of Answer and Counterclaims filed by Respondents Bonwick, Wicker, Gatten, Toth, Williams, Mackoff, and Bruce on or about: October 30, 2015.

Bonwick signed the Submission Agreement: October 30, 2015.

Wicker signed the Submission Agreement: October 30, 2015.

Gatten signed the Submission Agreement: October 30, 2015.

Toth signed the Submission Agreement: October 30, 2015.

Williams signed the Submission Agreement: October 30, 2015.

Mackoff signed the Submission Agreement: October 30, 2015.

Bruce signed the Submission Agreement: October 30, 2015.

Joint Statement of Answer to Amended Statement of Claim and Counterclaim filed by Respondents Mackoff and Bruce on or about: October 10, 2017.

Joint Statement of Answer to Amended Statement of Claim and Counterclaim filed by Respondents Bonwick and Wicker on or about: February 24, 2020.

Burnham Securities Inc. did not file a Statement of Answer or sign the Submission Agreement.

Alymeda did not file a Statement of Answer or sign the Submission Agreement.

CASE SUMMARY

In the Statement of Claim and the Amended Statement of Claim, Claimant asserted the following causes of action: unjust enrichment, tortious interference, conversion, misappropriation, unfair competition, theft, violation of Federal Rico Statute, and breach of fiduciary duties.

Unless specifically admitted in the Joint Statement of Answer, Respondents Bonwick, Wicker, Gatten, Toth, Williams, Mackoff, and Bruce denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

In the Counterclaim, Respondents Bonwick, Wicker, Gatten, Toth, Williams, Mackoff, and Bruce asserted the following causes of action: libel, trade libel, and violation of duty.

Unless specifically admitted in the Answer to the Counterclaim, Claimant denied the allegations made in the Counterclaim filed by Respondents Bonwick, Wicker, Gatten, Toth, Williams, Mackoff, and Bruce, and asserted various affirmative defenses.

Unless specifically admitted in the Joint Statement of Answer, Respondents Mackoff, and Bruce denied the allegations made in the Amended Statement of Claim and asserted various affirmative defenses.

In the Counterclaim, Respondents Mackoff and Bruce asserted the following causes of action: defamation and abuse of process.

In the Counterclaim, Respondent Bonwick asserted the following causes of action: lost business and reimbursement of legal fees.

Unless specifically admitted in the Answer, Claimant denied the allegations made in the Counterclaim filed by Respondents Mackoff and Bruce and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested damages in the amount of no less than \$4,000,000.00, or such greater sum as may be proved at hearing; punitive damages; treble damages under the federal RICO statute; pre-judgment interest; all attorneys' fees and other legal expenses incurred by Claimant in connection with this proceeding; all fees associated with the arbitration proceeding; preliminary and permanent injunctions precluding Respondents from representing to third parties that all or any part of Claimant or its affiliates have been "sold" to or acquired by Bonwick or that Claimant has left the taxable fixed income business; preliminary and permanent injunctions precluding Respondents from representing to third parties that Bonwick is a successor entity to Claimant; preliminary and permanent injunctions precluding Respondents from making representations to third parties, including but not limited to in responses to Requests for Proposals, claiming involvement by Bonwick in transactions executed by Claimant; preliminary and permanent injunctions precluding Respondents from using any confidential information, trade secrets, or any other data obtained from Claimant for business purposes; preliminary and permanent injunctions precluding Respondents from using any telephone numbers associated with or previously assigned to Claimant, including but not limited to numbers assigned to Claimant's Trading Desk; preliminary and permanent injunctions precluding Respondents from engaging in unfair competition with Claimant by any other means; preliminary and permanent injunctions requiring Respondents to cease and desist from transacting business with Municipalities to whom it has made representations regarding Claimant, until Respondents disclose to these Municipalities that Bonwick has not acquired any part of Claimant and cannot claim credit for Claimant's past transactions; and such other and further relief as the arbitration panel deems just and proper.

In the Statement of Answer and Counterclaim, Respondents Bonwick, Wicker, Gatten, Toth, Williams, Mackoff, and Bruce requested the panel to enter judgement in favor of Respondents and against Claimant on all causes of action in the Claim, including its request for injunctive relief; that the panel enter judgement in favor of Respondents and enter an award against Claimant on the Counterclaim in amount to be proven at hearing; that the panel award Respondents the costs incurred in this action and the related action before the Supreme Court of New York, including attorneys' fees and costs, as well as all fees associated with the arbitration hearing; that the panel award Respondents punitive damages; that the panel decline to exercise jurisdiction over Respondent Almeyda because she is not registered with FINRA and is not an Associated Person; that the panel enter declaratory relief stating that Claimant's allegations are false, and that the panel award such additional relief as is just and equitable.

In the Answer to Respondents Bonwick, Wicker, Gatten, Toth, Williams, Mackoff, and Bruce's Counterclaim, Claimant requested that the Counterclaims be denied in their entirety.

In the Amended Statement of Claim, Claimant requested damages in the amount of no less than \$4,000,000.00, or such greater sum as may be proved at hearing; punitive damages; treble damages under the federal RICO statute; pre-judgment interest; all attorneys' fees and other legal expenses incurred by Claimant in connection with this proceeding; all fees associated with the arbitration proceeding; and such other and further relief as the arbitration panel deems just and proper.

In the Answer to the Amended Statement of Claim, Respondents Bonwick and Wicker requested that Claimant's claims be denied and Bonwick be awarded \$800,000.00 in damages against Claimant; \$200,000.00 in legal fees paid to defend the original frivolous case; and \$600,000.00 in damages due to lost business as a result of time spent responding and preparing for the arbitration.

In the Answer to the Amended Statement of Claim, Respondents Mackoff and Bruce requested that the panel dismiss Claimant's claims with prejudice; order that Claimant take nothing from Respondents; enter judgment against Claimant in all respects; enter judgment that Claimant defamed Respondents Mackoff and Bruce; enter judgment that Claimant abused the process of this tribunal; award Respondents Mackoff and Bruce damages in the nature of \$4,000,000.00; costs, together with reasonable attorneys' fees, and all other expenses and costs; and for such other relief as deemed just and proper.

In the Answer to Respondents Mackoff and Bruce's Counterclaim, Claimant requested that the Counterclaims be denied in their entirety.

In the June 15, 2021 post-hearing submission, Respondents Bonwick and Wicker requested that the Panel award total damages on the Counterclaims against Claimant in the total sum of \$785,580.07 in legal fees and expenses, with interest and an award of arbitration fees.

OTHER ISSUES CONSIDERED AND DECIDED

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

Respondent Alymeda did not file a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and is bound by the determination of the Panel on all issues submitted.

By Order dated January 13, 2016, the Panel denied Claimant's request for Permanent Injunction.

On May 17, 2016 Claimants and Respondents Gatten and Toth filed a Stipulation of Discontinuance. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim against Respondents Gatten and Toth.

Claimant did not name Alymeda as a Respondent in the Amended Statement of Claim filed on March 3, 2017. Therefore, Alymeda was removed as Respondent and the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim against Alymeda.

On March 28, 2017, Respondent Mackoff filed a Motion to Strike and Dismiss. On March 28, 2017, Respondent Bruce filed a Motion to Strike and Dismiss. On May 12, 2017, Claimant opposed the Motions to Strike and Dismiss filed by Respondents Mackoff and Bruce. By Order dated June 15, 2017, the Panel denied the Motions to Strike and Dismiss filed by Respondents Mackoff and Bruce.

On June 26, 2017, Claimant filed a notice of voluntary dismissal without prejudice of the claims against Respondent Williams. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim and the Amended Statement of Claim against Williams.

On February 8, 2018, Claimant, and Respondents Bruce and Mackoff, filed a Stipulation of Discontinuance. Claimant discontinued all claims against Respondents Bruce and Mackoff, and Respondents Bruce and Mackoff discontinued all claims against Claimant. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim and the Amended Statement of Claim against Respondents Bruce and Mackoff or the relief requests in the Counterclaim filed by Respondents Bruce and Mackoff.

On February 5, 2018, Claimant filed a Motion for a Default Award against Respondents Bonwick, Wicker, and Burnham pursuant to FINRA Rule 13801. Bonwick and Wicker previously submitted signed Submission Agreements and a Statement of Answer and remained in this case. Claimant's claims against Respondent Burnham were therefore bifurcated from this matter.

The Panel conducted in-person evidentiary hearings on November 4, 2015, November 17, 2015, December 8, 2015, and February 25, 2020. Due to the Covid-19 pandemic, virtual evidentiary hearings were held on January 20, 2021 and March 31, 2021.

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

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. Claimant's claims are denied in their entirety.
2. Respondent Bonwick's Counterclaims are denied in their entirety.
3. Claimant is liable for and shall pay to Respondents Bonwick and Wicker the sum of \$266,422.86 in attorney's fees. Claimant and Respondents Bonwick and Wicker requested attorneys' fees.

4. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, treble damages, and attorneys' fees, are denied.

FEES

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

Filing Fees

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

Initial Claim Filing Fee	= \$ 4,000.00
Counterclaim Filing Fee	= \$ 2,550.00
Counterclaim Filing Fee (Mackoff and Bruce)	= \$ 2,000.00

**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 firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, as parties, Rice Financial Products Company, Bonwick Capital Partners LLC, and Burnham Securities Inc., are each assessed the following:

Member Surcharge	= \$ 4,025.00
Member Process Fee	= \$ 7,000.00

Postponement Fees

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

December 6-9, 2016, postponement requested by Mackoff	= \$ 1,500.00
December 5-7, 2017, postponement requested by Mackoff and Bruce	= \$ 1,500.00
February 6-8, 2018, postponement requested by Claimant	= \$ 1,500.00
November 27-29, 2018 postponement requested by Claimant	= \$ 1,500.00
November 6-8, 2019 postponement requested by Claimant	= \$ 1,500.00

Total Postponement Fees	= \$ 7,500.00
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The Panel has assessed \$5,400.00 of the postponement fees Claimant.

The Panel has assessed \$750.00 of the postponement fees jointly and severally to Respondents Bonwick, Wicker, Williams, Mackoff, Bruce, and Alymeda.

The Panel has assessed \$600.00 of the postponement fees jointly and severally to Respondents Bonwick, Wicker, Mackoff, and Bruce.

The Panel assessed \$750.00 of the postponement fees equally to Respondents Bonwick, Burnham, and Wicker.

Last-Minute Cancellation Fees

Fees apply when a hearing on the merits is cancelled within ten calendar days before the start of a scheduled hearing session:

December 5-7, 2017, postponement requested by Mackoff and Bruce	= \$	1,800.00
February 6-8, 2018, postponement requested by Claimant	= \$	1,800.00
November 6-8, 2019 postponement requested by Claimant	= \$	1,800.00
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Total Last-Minute Cancellation Fees	= \$	5,400.00

The Panel has assessed \$3,780.00 of the last-minute cancellation fees to Claimant.
The Panel has assessed \$720.00 of the last-minute cancellation fees jointly and severally to Respondents Bonwick, Wicker, Mackoff, and Bruce.
The Panel has assessed \$900.00 of the last-minute cancellation fees equally to Respondents Bonwick, Burnham, and Wicker.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court.

1. Rice Financial Products Company is assessed:

Injunctive Relief Surcharge	= \$	2,500.00
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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 Panel, including a pre-hearing conference with the Panel, which lasts four (4) hours or less. Fees associated with these proceedings are:

Nine (9) pre-hearing sessions with the Panel @ \$1500.00/session	= \$	13,500.00
Pre-Hearing Conferences: March 24, 2016	1 session	
February 14, 2017	1 session	
August 10, 2017	1 session	
August 23, 2018	1 session	
March 12, 2019	1 session	
March 21, 2019	1 session	
April 30, 2019	1 session	
August 15, 2019	1 session	
June 23, 2020	1 session	

Eleven (11) hearing sessions @ \$1500.00/session		= \$ 16,500.00
Hearings:		
	November 4, 2015	2 sessions
	November 17, 2015	2 sessions
	December 8, 2015	2 sessions
	February 25, 2020	1 session
	January 20, 2021	2 Sessions
	March 31, 2021	2 Sessions

Total Hearing Session Fees	= \$ 30,000.00
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The Panel has assessed \$16,350.00 of the hearing session fees Claimant.
The Panel has assessed \$7,200.00 of the hearing session fees Respondent Bonwick.
The Panel has assessed \$4,500.00 of the hearing session fees to Respondent Wicker.
The Panel has assessed \$750.00 of the hearing session fees jointly and severally to Respondents Bonwick, Wicker, Williams, Mackoff, Bruce, Gatten, Toth, and Alyneda.
The Panel has assessed \$750.00 of the hearing session fees jointly and severally to Respondents Bonwick, Williams, Wicker, Mackoff, Bruce, and Alyneda.
The Panel has assessed \$450.00 of the hearing session fees jointly and severally to Respondents Bonwick, Burnham, Wicker, Mackoff, and Bruce.

All balances are payable to FINRA Dispute Resolution Services and are due upon receipt.

ARBITRATION PANEL

Aubrey Lees	-	Public Arbitrator, Presiding Chairperson
Susan Manca	-	Public Arbitrator
Rebecca Ann Berlow	-	Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

Concurring Arbitrators' Signatures

Aubrey Lees

Aubrey Lees
Public Arbitrator, Presiding Chairperson

07/16/2021

Signature Date

Susan Manca

Susan Manca
Public Arbitrator

07/15/2021

Signature Date

Rebecca Ann Berlow

Rebecca Ann Berlow
Non-Public Arbitrator

07/16/2021

Signature Date

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.

July 16, 2021

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