

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Oriental Financial Services Corp.

Case Number: 16-01033

vs.

Respondent
Jose Rafael Ortiz

Hearing Site: San Juan, Puerto Rico

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. Associated Person

REPRESENTATION OF PARTIES

For Claimant Oriental Financial Services Corp.: Pedro Hernandez-Freire, Esq., Delgado & Fernandez, LLC, San Juan, Puerto Rico.

For Respondent Jose Rafael Ortiz: Enrique J. Mendoza Sanchez, Esq., Mendoza Law Offices, San Juan, Puerto Rico.

CASE INFORMATION

Statement of Claim filed on or about: April 5, 2016.

Oriental Financial Services Corp. signed the Submission Agreement: April 5, 2016.

Statement of Answer and Counterclaim filed by Respondent on or about: November 7, 2016.

Jose Rafael Ortiz signed the Submission Agreement: November 7, 2016.

Answer to Counterclaim filed by Claimant on or about: December 30, 2016.

Amended Counterclaim deemed filed by Respondent on or about: March 24, 2021.

Answer to Amended Counterclaim filed by Claimant on or about: April 13, 2021.

CASE SUMMARY

In the Statement of Claim, Claimant asserted a cause of action for breach of promissory notes. The cause of action relates to Respondent's failure to repay three (3) fully executed promissory

notes dated July 31, 2013, (Notes 1, 2 and 3), pursuant to Respondent's Independent Contractor Agreement (the "Agreement").

Unless specifically admitted in the Statement of Answer and Counterclaim, as amended, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In his Counterclaim, as amended, Respondent asserted the following causes of action: violation of FINRA's Standard of Commercial Honor and Principles of Trade (FINRA Rule 2010); failure to design, establish, execute, and test an adequate supervisory program for its producing manager; and wrongful termination. The causes of action relate to the termination of Respondent's employment with Claimant.

Unless specifically admitted in the Answer to Counterclaim, Claimant denied the allegations made in the Counterclaim and asserted various affirmative defenses.

Unless specifically admitted in the Answer to Amended Counterclaim, Claimant denied the allegations made in the Amended Counterclaim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: payment of the full amount of principal and interest of \$16,839.28, plus interest that would continue to accrue until full payment; the costs of prosecuting Claimant's claims against Respondent, including but not limited to forum fees, attorneys' fees, and other case related costs; and such further relief as is fair and just.

In the Statement of Answer and Counterclaim, as amended, Respondent requested: \$64,679.00 for statutory severance pay under Law 80, plus 25% of said sum for attorneys' fees; \$1,000,000.00 for Respondent's loss of goodwill and loss of means; \$500,000.00 for mental pain and anguish; \$3,000,000.00 for punitive damages; attorneys' fees in an amount corresponding to 25% of all awards to Respondent; and costs and arbitration fees.

In its Answer to Respondent's Counterclaim, Claimant requested that Respondent's Counterclaim be dismissed with prejudice.

In its Answer to Respondent's Amended Counterclaim, Claimant requested that Respondent's Counterclaim, as amended, be dismissed with prejudice.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

On or about September 9, 2019, Respondent filed a Motion to File an Amended Counterclaim, in which he sought, among other things, to conform the pleadings with the evidence available, to increase the amount of the relief requested from \$65,000.00 to \$4,564,679.00, and to further define his causes of action and remedies stemming from his employment relationship with Claimant. In its September 19, 2019, Opposition, Claimant asserted, among other things, that the undue delay in Respondent seeking the amendment was sufficient basis to deny Respondent's Motion, and that an amendment to conform to evidence does not apply in this situation. On September 21, 2019, Respondent further replied, among other things, that his motion was an attempt to resort to this forum to entertain the full scope of his allegations against

his former employer, and that he would lose his right to vindicate his employment law rights if the Motion was not granted. The Arbitrator conducted a pre-hearing conference on October 4, 2019, so the parties could present oral argument on Respondent’s Motion, and subsequently issued an Order in which he denied the Motion without prejudice.

On February 2, 2021, Respondent filed a Renewed Motion to File an Amended Counterclaim, in which he reasserted his prior grounds. On February 12, 2021, Claimant filed an Opposition in which it reiterated its prior grounds for opposition. The Arbitrator conducted a pre-hearing conference on March 24, 2021, so the parties could present oral argument on Respondent’s Renewed Motion, and subsequently issued an Order in which he granted the Renewed Motion.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and any post-hearing submissions, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable for and shall pay to Claimant the sum of \$16,839.28 in compensatory damages.
2. Respondent is liable for and shall pay to Claimant prejudgment interest on the above-stated sum in the amount of \$4,867.86.
3. Respondent is liable for and shall pay to Claimant the sum of \$672.82 in costs.
4. Respondent’s Counterclaim, as amended, is denied in its entirety.
5. Any and all claims for relief not specifically addressed herein, including any requests for punitive 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	= \$ 1,050.00
Counterclaim Filing Fee	= \$ 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 firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Claimant Oriental Financial Services Corp. is assessed the following:

Member Surcharge	= \$ 450.00
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Member Process Fee = \$ 6,175.00

Postponement Fees

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

November 25-27, 2019, joint postponement request = WAIVED

August 11-13, 2021, Claimant's postponement request = WAIVED

Total Postponement Fees = WAIVED

The Arbitrator has waived the postponement fees.

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:

August 11-13, 2021, Claimant's postponement request = WAIVED

Total Last-Minute Cancellation Fees = WAIVED

The Arbitrator has waived the last-minute cancellation fee.

Hearing Session Fees and Assessments

The Arbitrator has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Arbitrator(s), including a pre-hearing conference with the Arbitrator(s), which lasts four (4) hours or less. Fees associated with these proceedings are:

Five (5) pre-hearing sessions with a single Arbitrator @ \$450.00/session = \$ 2,250.00
Pre-Hearing Conferences: January 30, 2017 1 session
October 4, 2019 1 session
February 2, 2021 1 session
March 24, 2021 1 session
August 12, 2021 1 session

Four (4) hearing sessions @ \$450.00/session = \$ 1,800.00
Hearings: October 12, 2021 2 sessions
October 13, 2021 2 sessions

Total Hearing Session Fees = \$ 4,050.00

The Arbitrator has assessed \$2,250.00 of the hearing session fees to Claimant.

The Arbitrator has assessed \$1,350.00 of the hearing session fees to Respondent.

The Arbitrator has waived \$450.00 of the hearing session fees for the August 12, 2021, Pre-Hearing Conference.

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

ARBITRATOR

Seth L. Finkel

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Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument, which is my award.

Arbitrator's Signature

Seth L. Finkel

Seth L. Finkel
Sole Public Arbitrator

12/17/2021

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.

December 17, 2021

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