

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimant  
James O. Sturdivant

Master Consolidated Case Number:  
17-03260

vs.

Respondent  
Marc Alan Ferries

Hearing Site: Portland, Oregon

***Consolidated with the following case:***

Claimant  
Clinton Hugh Holland

Subordinate Case Number:  
18-03879

vs.

Respondent  
James O. Sturdivant

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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: Associated Person vs. Associated Person  
Associated Person vs. Associated Person

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimant James O. Sturdivant (“Sturdivant”): Andrew D. Campbell, Esq., Heltzel, Williams, P.C., Salem, Oregon.

For Respondents Marc Alan Ferries (“Ferries”), and Clinton Hugh Holland (“Holland”): Charles W. Carnese, Esq. and Michael McCaslin, Esq., Kivel & Howard LLP, Portland, Oregon.

**CASE INFORMATION**

***Master Consolidated Case 17-03260***

Statement of Claim filed on or about: December 4, 2017.

Sturdivant's Response to Counterclaim filed on or about: July 10, 2018.  
Amended Statement of Claim filed on or about: August 29, 2018.  
Sturdivant's Answer to Counterclaim filed on or about: October 8, 2018.  
Sturdivant signed the Submission Agreement: December 4, 2017.

Statement of Answer and Counterclaim filed by Ferries on or about: July 2, 2018  
Answer and Counterclaim to the Amended Statement of Claim filed by Ferries on or about:  
September 28, 2018.  
Ferries signed the Submission Agreement: April 23, 2018.

**Subordinate Case 18-03879**

Statement of Claim filed on or about: November 8, 2018.  
Response to Counterclaim filed by Holland on or about: December 21, 2018.  
Response to Sturdivant's Amended Counterclaim filed by Holland on or about: January 21,  
2019.  
Holland signed the Submission Agreement: November 8, 2018.

Statement of Answer and Counterclaim filed by Sturdivant on or about: December 13, 2018.  
Amended Answer and Counterclaim filed by Sturdivant on or about: January 9, 2019.  
Sturdivant signed the Submission Agreement: December 14, 2018.

**CASE SUMMARY**

**Master Consolidated Case 17-03260**

In the Statement of Claim, Sturdivant asserted the following cause of action: breach of the Transition Bonus Promissory Note executed by Ferries dated September 1, 2015 ("Note").

In the Amended Statement of Claim, Sturdivant added an additional cause of action for breach of the Associate Financial Advisor Agreement ("the Agreement").

Sturdivant asserted that the remaining balance of the Note became due upon the resignation of Ferries' from his employment.

In the Statement of Answer, Ferries denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

In the Counterclaim, Ferries asserted breach of fiduciary duties as the sole cause of action. The cause of action relates to Ferries' allegations that Sturdivant acted under a conflict of interest and engaged in self-dealing while jointly owning an entity.

In the Answer and Counterclaim to the Amended Statement of Claim, Ferries denied the allegations made in the Amended Statement of Claim, asserted various affirmative defenses, and asserted the following additional causes of action in his Counterclaim against Claimant: breach of contract; failure to disclose; and unjust enrichment. The additional causes of action relate to Ferries' allegation that Sturdivant misrepresented the total transition bonus amount, induced agreement from Ferries, and failed to perform his obligations.

In the Response and Answer to Counterclaim, Sturdivant asserted various affirmative defenses.

**Subordinate Case 18-03879**

In the Statement of Claim, Holland asserted the following causes of action: breach of fiduciary duties; failure to disclose; and unjust enrichment. The causes of action relate to Holland's allegations that Sturdivant acted under a conflict of interest and engaged in self-dealing while jointly owning an entity, induced agreement from Holland, and failed to perform his obligations.

In the Statement of Answer and Amended Answer, Sturdivant denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

In the Counterclaim and the Amended Counterclaim, Sturdivant asserted the following causes of action: lack of good faith and attorneys' fees pursuant to the agreement. The causes of action relate to the termination of Holland's employment.

In the Responses to Counterclaim and the Amended Counterclaim, Holland denied the allegations made and asserted an affirmative defense.

**RELIEF REQUESTED**

**Master Consolidated Case 17-03260**

In the Statement of Claim, Sturdivant requested:

1. Declaratory ruling that Ferries owes Sturdivant a balance due and owing under the Note in the amount of \$50,699.10;
2. Attorneys' fees; and
3. Costs.

In the Amended Statement of Claim, Sturdivant requested:

1. Judgement and a money award against Ferries for the amount owing on the Note in the amount of \$50,669.10;
2. Pre-judgment and post-judgment interest;
3. Costs;
4. Attorneys' fees;
5. Judgment and a money award against Ferries for damages caused by Ferries' breach of the Agreement and failure to give 10 days notice of resignation in an amount to be proven, but not more than \$50,000.00; and
6. Declaratory judgment that Ferries breached the Agreement's notice provisions and an award for Sturdivant's costs and attorneys' fees.

In the Statement of Answer and Counterclaim, Ferries requested:

1. Declaration that the Note and written agreements between the parties are unenforceable on the basis of unconscionability and undue influence;
2. Indication of partial satisfaction of the underlying obligation in an amount to be determined by the Panel, in the event that the Panel grants an award in favor of Sturdivant on the Note;
3. Economic damages;
4. Non-economic damages;

5. Punitive damages;
6. Attorneys' fees; and
7. Costs.

In the Answer and Counterclaim to the Amended Statement of Claim, Ferris requested:

1. Declaration that the Note and written agreements between the parties are unenforceable on the basis of unconscionability and undue influence;
2. Indication of partial satisfaction of the underlying obligation in an amount to be determined by the Panel, in the event that the Panel grants an award in favor of Sturdivant on the Note;
3. Economic damages;
4. Non-economic damages;
5. Punitive damages;
6. Attorneys' fees;
7. Costs; and
8. Appropriate equitable relief in the amount determined by the Panel.

In the Response and Answer to Counterclaim, Sturdivant did not set forth a specific relief request.

#### **Subordinate Case 18-03879**

In the Statement of Claim, Holland requested:

1. Economic damages;
2. Non-economic damages;
3. Punitive damages;
4. Attorneys' fees;
5. Costs; and
6. Appropriate equitable relief in the amount determined by the Panel.

In the Statement of Answer and Counterclaim, Sturdivant requested:

1. Holland take nothing and that judgment be entered in favor of Sturdivant;
2. Attorneys' fees; and
3. Costs.

In the Amended Answer and Counterclaim, Sturdivant requested:

1. Holland take nothing and that judgment be entered in favor of Sturdivant; and
2. Attorneys' fees and costs, estimated to be approximately \$20,000.00.

In the Responses to Counterclaim and the Amended Counterclaim, Holland did not set forth a specific relief request.

#### **OTHER ISSUES CONSIDERED AND DECIDED**

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

On August 29, 2018, Sturdivant filed an unopposed motion to file an Amended Statement of Claim. By Order dated September 18, 2018, the Panel granted Sturdivant's motion.

On January 29, 2019, Sturdivant filed a Motion to Dismiss (“First Motion to Dismiss”) Ferries’ claims pursuant to Rule 13504 of the Code of Arbitration Procedure (“Code”). On March 14, 2019, Ferries filed a response opposing the First Motion to Dismiss. On March 19, 2019, Sturdivant filed his reply. By Order dated October 14, 2019, the Panel denied Sturdivant’s First Motion to Dismiss.

During the initial pre-hearing conference held on October 30, 2019, the parties verbally agreed to consolidate the two above-referenced arbitrations into a single action. By Order dated November 6, 2019, the Panel memorialized the consolidation.

On June 30, 2020, Sturdivant filed a Motion to Dismiss—Statute of Limitations (“Second Motion to Dismiss”) against Ferries and Holland. On August 27, 2020, Ferries and Holland filed their joint response opposing the Second Motion to Dismiss. On September 9, 2020, Sturdivant filed his reply. By Order dated October 8, 2020, Sturdivant’s Second Motion to Dismiss was partially granted, and Ferries’ first counterclaim-breach of fiduciary duties; third counterclaim-failure to disclose; and fourth counterclaim-unjust enrichment, as set forth in Ferries’ Answer to Sturdivant’s Amended Statement of Claim, were dismissed. The Order further stated that Sturdivant’s Second Motion to Dismiss Holland’s claims are granted, and accordingly Holland is dismissed from the case. Finally, the Order stated that the remaining claims in this consolidated case are Sturdivant’s claim against Ferries, and Ferries’ counterclaim for breach of contract against Sturdivant.

On March 19, 2021, the parties submitted a joint stipulation that they consent to this case being decided by a two-arbitrator panel.

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. Ferries is liable for and shall pay to Sturdivant the sum of \$30,669.00 in compensatory damages.
2. Ferries is liable for and shall pay to Sturdivant the sum of \$36,000.00 in attorneys’ fees and costs, pursuant to the Note and O.R.S. § 20.096.
3. Ferries’ Counterclaim is denied.
4. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, are denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

### **Filing Fees**

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

Initial Claim Filing Fee	= \$	1,425.00
Counterclaim Filing Fee	= \$	1,575.00

*\*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 Sturdivant's current firm and Ferries' former firm, Ameriprise Financial Services, LLC is assessed the following:

Member Surcharge	= \$	1,700.00
Member Process Fee	= \$	3,750.00

### **Postponement Fees**

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

February 5-7, 2020, postponement requested by Ferries	= \$	1,125.00
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Total Postponement Fees	= \$	1,125.00

The Panel has assessed \$562.50 of the postponement fees to Sturdivant.

The Panel has assessed \$562.50 of the postponement fees to Ferries.

### **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 Arbitrator(s), including a pre-hearing conference with the Arbitrator(s), which lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) pre-hearing sessions with a single Arbitrator @ \$450.00/session	= \$	900.00
Pre-Hearing Conferences: June 21, 2018	1 session	
January 7, 2020	1 session	
Ten (10) pre-hearing sessions with the Panel @ \$1,125.00/session	= \$	11,250.00
Pre-Hearing Conferences: September 14, 2018	1 session	
October 1, 2019	1 session	
October 30, 2019	1 session	
December 16, 2019	1 session	
January 13, 2020	1 session	
April 9, 2020	1 session	
April 22, 2020	1 session	
July 27, 2020	1 session	
September 23, 2020	1 session	
March 2, 2021	1 session	

One (1) hearing session @ \$1,125.00/session		= \$	1,125.00
Hearing: April 28, 2021	1 session		
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Total Hearing Session Fees		= \$	13,275.00

The Panel has assessed \$6,637.50 of the hearing session fees to Sturdivant.

The Panel has assessed \$6,637.50 of the hearing session fees to Ferries.

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

**ARBITRATION PANEL**

James E. Bartels - Public Arbitrator, Presiding Chairperson  
Gideon Daniel Caron - 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.

**Concurring Arbitrators' Signatures**

***James E. Bartels***

\_\_\_\_\_  
James E. Bartels  
Public Arbitrator, Presiding Chairperson

06/17/2021

\_\_\_\_\_  
Signature Date

***Gideon Daniel Caron***

\_\_\_\_\_  
Gideon Daniel Caron  
Public Arbitrator

06/17/2021

\_\_\_\_\_  
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.

June 17, 2021

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