

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Jefferies LLC

Case Number: 18-00553

vs.

Respondent
Dean James Decker

Hearing Site: Los Angeles, California

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

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Jefferies LLC (“Claimant”): Andrew J. Shapren, Esq., Buchanan Ingersoll & Rooney PC, Philadelphia, Pennsylvania.

For Respondent Dean James Decker (“Respondent”): David Jacobs, Esq., Epstein Becker & Green, P.C., Los Angeles, California.

CASE INFORMATION

Statement of Claim filed on or about: February 12, 2018.

Answer to Counterclaim filed on or about: May 2, 2018.

Claimant signed the Submission Agreement: February 9, 2018.

Statement of Answer and Counterclaim filed on or about: April 12, 2018.

Respondent signed the Submission Agreement: April 12, 2018.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: breach of contract and promissory estoppel. The cause of action relates to alleged liquidated damages Respondent owed to Claimant pursuant to a January 2, 2017 Agreement (“Agreement”).

Unless specifically admitted in the Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

In the Counterclaim, Respondent asserted the following causes of action: violation of FINRA Rule 2010; violation of Cal. Bus. & Prof. Code section 17200 - based on an unlawful business practice in violation of Cal. Bus. & Prof. Code section 16600; violation of Cal. Bus. & Prof. Code section 17200; and illegal contract. The causes of action relate to Claimant's recruitment tactics and enforceability of the Agreement.

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

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Liquidated damages pursuant to the Agreement in the amount of \$4,000,000.00;
2. Actual compensatory damages for breach of the Agreement only in the event the liquidated damages clause is not enforced;
3. Compensatory damages for promissory estoppel only in the event the liquidated damages clause is not enforced; and
3. Any other relief the Panel may deem just and proper.

In the Statement of Answer and Counterclaim, Respondent requested:

1. Claimant's Statement of Claim be dismissed in its entirety, with prejudice;
2. Costs, disbursements, and reasonable attorneys' fees;
3. Compensatory damages on each of his counterclaims in an amount to be determined at the hearings in this matter;
4. Injunctive relief enjoining Claimant from enforcing the liquidated damages clause; and
5. Such other relief, general or special, legal or equitable, to which Respondent is justly entitled.

In the Answer to Counterclaim, Claimant requested:

1. Respondent's counterclaim be denied in its entirety;
2. Attorneys' fees and costs incurred in defending itself from Respondent's counterclaim pursuant to the Agreement or on the grounds that it is legally and factually frivolous and has been asserted in bad faith; and
3. Any other relief that the Panel thinks is just.

OTHER ISSUES CONSIDERED AND DECIDED

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

On December 31, 2018, Claimant filed a Motion to Bifurcate the Hearing. In its motion, Claimant proposed the first phase of the hearing to address validity of the liquidated damages provision in the Agreement and the second phase of the hearing to address remaining issues. On January 29, 2019, Respondent filed his opposition to the motion. On February 4, 2019, Claimant filed its reply in support of the motion. On April 10, 2019, the Panel granted the motion.

The Panel conducted the first phase of the hearing by videoconference on March 1-4, 2021. On April 10, 2021, the Panel issued an order and ruled that the liquidated damages provision in the Agreement is legal and enforceable.

The Panel provided the parties with an opportunity to present their respective cases during the second phase of the hearing. However, on June 23, 2021, the parties filed a joint request that the Panel cancel the remaining hearing dates for the second phase of the hearing and enter a final award in this matter.

On September 10, 2021, the parties submitted a joint agreement to split FINRA fees and costs equally between the parties, thereby rendering the applicability of Armendariz fee allocation moot. The parties further agreed that no party shall recover legal fees or legal costs of this arbitration, and that each party will bear its own legal fees and legal costs.

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 majority of the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent shall pay to Claimant the sum of \$4,000,000.00 in liquidated damages pursuant to the order dated April 10, 2021.
2. Respondent’s Counterclaim is denied in its entirety.
3. The Panel ruled that Armendariz v. Foundation Health Psychcare Services, Inc., 24 Cal. 4th 83 (2000) does not apply in this matter.
4. Each party shall bear its own legal fees and legal costs pursuant to the parties’ joint agreement dated September 10, 2021.
5. Any and all claims for relief not specifically addressed herein 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	= \$	3,400.00
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 a party, Claimant is assessed the following:

Member Surcharge	= \$	3,025.00
Member Process Fee	= \$	6,175.00

Postponement Fees

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

April 27 – May 1, 2020, postponement requested by parties	= \$	1,400.00
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Total Postponement Fees	= \$	1,400.00
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Pursuant to the parties' agreement, the Panel has assessed \$700.00 of the postponement fees to Claimant.

Pursuant to the parties' agreement, the Panel has assessed \$700.00 of the postponement fees to Respondent.

Discovery-Related Motion Fees

Fees apply for each decision rendered on a discovery-related motion.

Six (6) decisions on discovery-related motions on the papers with one (1) Arbitrator @ \$200.00/decision	= \$	1,200.00
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One (1) decision on discovery-related motions on the papers with Three (3) Arbitrators @ \$600.00/decision	= \$	600.00
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Claimant submitted Five (5) discovery-related motions.
Respondent submitted Two (2) discovery-related motions.

Total Discovery-Related Motion Fees	= \$	1,800.00
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Pursuant to the parties' agreement, the Panel has assessed \$900.00 of the discovery-related motion fees to Claimant.

Pursuant to the parties' agreement, the Panel has assessed \$900.00 of the discovery-related motion fees to Respondent.

Contested Motion for Issuance of Subpoena Fees

Fees apply for each decision on a contested motion for the issuance of a subpoena.

One (1) decision on contested motions for the issuance of a subpoena with one Arbitrator @ \$250.00	= \$	250.00
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Total Contested Motion for Issuance of Subpoena Fees	= \$	250.00
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Pursuant to the parties' agreement, the Panel has assessed \$125.00 of the contested motion for issuance of subpoena fees to Claimant.

Pursuant to the parties' agreement, the Panel has assessed \$125.00 of the contested motion for issuance of subpoena fees to Respondent.

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

Five (5) pre-hearing sessions with the Panel @ \$1,400.00/session		= \$ 7,000.00
Pre-Hearing Conferences:		
June 15, 2018	1 session	
March 13, 2019	1 session	
April 8, 2019	1 session	
August 26, 2020	1 session	
September 21, 2020	1 session	
Eight (8) hearing sessions @ \$1,400.00/session		= \$ 11,200.00
Hearings:		
March 1, 2021	2 sessions	
March 2, 2021	2 sessions	
March 3, 2021	2 sessions	
March 4, 2021	2 sessions	

Total Hearing Session Fees = \$ 18,200.00

Pursuant to the parties' agreement, the Panel has assessed \$8,400.00 of the hearing session fees to Claimant.

Pursuant to the parties' agreement, the Panel has assessed \$8,400.00 of the hearing session fees to Respondent.

The Panel has waived \$1,400.00 of the hearing session fees.

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

ARBITRATION PANEL

Michael Harrison	-	Public Arbitrator, Presiding Chairperson
Cynthia Cashman Makin	-	Public Arbitrator
Laurent C. Vonderweidt	-	Non-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

Michael Harrison

Michael Harrison
Public Arbitrator, Presiding Chairperson

09/30/2021

Signature Date

Laurent C. Vonderweidt

Laurent C. Vonderweidt
Non-Public Arbitrator

09/30/2021

Signature Date

Dissenting Arbitrator's Signature

Cynthia Cashman Makin

Cynthia Cashman Makin
Public Arbitrator

09/30/2021

Signature Date

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September 30, 2021

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