

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Jefferies LLC

Case Number: 18-00556

vs.

Respondent
Edward B. Swigert

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 Edward B. Swigert (“Respondent”): David Jacobs, Esq., Epstein Becker & Green, P.C., Los Angeles, California.

CASE INFORMATION

Statement of Claim filed on or about: February 9, 2018.

Answer to the Counterclaim filed on or about: April 30, 2018.

Claimant signed the Submission Agreement: February 9, 2018.

Statement of Answer and Counterclaim filed by Respondent on or about: April 9, 2018.

Respondent signed the Submission Agreement: April 9, 2018.

CASE SUMMARY

In the Statement of Claim, Claimant asserted breach of contract as the sole cause of action. The cause of action relates to alleged liquidated damages Respondent owed to Claimant pursuant to a January 2, 2017 Agreement (“Agreement”).

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 the offer letter was an illegal contract. The causes of action relate to the allegedly unlawful liquidated damages clause within the Agreement.

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 \$850,000.00;
2. Actual compensatory damages for breach of the Agreement 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. Dismissal of Claimant's Statement of Claim in its entirety, with prejudice;
2. Costs, disbursements, and reasonable attorneys' fees;
5. Compensatory damages in an amount to be determined at the hearings in this matter;
6. Injunctive relief enjoining Claimant from enforcing the liquidated damages clause; and
7. Such other relief, general or specific, legal or equitable, to which Respondent is justly entitled.

In the Answer to the Counterclaim, Claimant requested:

1. Denial of Respondent's Counterclaim in its entirety;
2. Attorneys' fees and costs; and
3. Any other relief that the Panel deems just.

At the hearing, Claimant requested \$850,000.00 for the breach pursuant to the liquidated damages clause contained in the Agreement, or, in the alternative, \$900,000.00 in actual damages.

At the hearing, Respondent requested \$400,000.00 in attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

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

FINDINGS

The Panel finds that the involved liquidated damages clause violates California Business and Professions Code section 16600.

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's Counterclaim is denied.
3. Any and all claims for relief not specifically addressed herein, including any requests for 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	= \$	2,550.00
Counterclaim Filing Fee	= \$	1,575.00

**The filing fee is made up of a non-refundable and a refundable portion.*

Pursuant to Armendariz v. Foundation Health Psychcare Services, Inc., 24 Cal. 4th 83 (2000) Respondent is assessed a \$200.00 counterclaim filing fee. The balance of the non-refundable portion of the counterclaim filing fee, in the amount of \$175.00, is assessed to Claimant.

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	= \$	2,475.00
Member Process Fee	= \$	5,075.00

Postponement Fees

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

November 12-14, 2019, postponement requested by parties	=	WAIVED
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Discovery-Related Motion Fees

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

Five (5) decisions on discovery-related motions on the papers with one (1) Arbitrator @ \$200.00/decision	= \$	1,000.00
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Claimant submitted three (3) discovery-related motion
Respondent submitted two (2) discovery-related motions

Total Discovery-Related Motion Fees = \$ 1,000.00

Pursuant to Armendariz v. Foundation Health Psychcare Services, Inc., 24 Cal. 4th 83 (2000), the Panel has assessed the total discovery-related motion fees to Claimant.

Contested Motion for Issuance of Subpoena Fees

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

One (1) decisions on contested motions for the issuance of a subpoena with one Arbitrator @ \$250.00 = \$ 250.00

Total Contested Motion for Issuance of Subpoena Fees = \$ 250.00

Pursuant to Armendariz v. Foundation Health Psychcare Services, Inc., 24 Cal. 4th 83 (2000), the Panel has assessed the total contested motion for issuance of subpoena fees to Claimant.

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:

Three (3) pre-hearing sessions with the Panel @ \$1,300.00/session = \$ 3,900.00
Pre-Hearing Conferences: May 29, 2018 1 session
December 3, 2020 1 session
December 18, 2020 1 session

Eight (8) hearing sessions @ \$1,300.00/session = \$ 10,400.00
Hearings: January 12, 2021 2 sessions
January 13, 2021 2 sessions
January 14, 2021 1 session
January 15, 2021 2 sessions
February 12, 2021 1 session

Total Hearing Session Fees = \$ 14,300.00

The Panel has waived \$1,300.00 of the hearing session fees.

Pursuant to Armendariz v. Foundation Health Psychcare Services, Inc., 24 Cal. 4th 83 (2000), the Panel has assessed \$13,000.00 of the hearing session fees to Claimant.

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

ARBITRATION PANEL

Kendall C. Reed	-	Public Arbitrator, Presiding Chairperson
Frank Cronin	-	Public Arbitrator
Sheldon M. Jaffe	-	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

Kendall C. Reed

Kendall C. Reed
Public Arbitrator, Presiding Chairperson

03/04/2021

Signature Date

Frank Cronin

Frank Cronin
Public Arbitrator

03/04/2021

Signature Date

Sheldon M. Jaffe

Sheldon M. Jaffe
Non-Public Arbitrator

03/04/2021

Signature Date

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March 05, 2021

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