

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
SunTrust Investment Services, Inc.

Case Number: 18-03403

vs.

Respondent
Veronica Gillotte

Hearing Site: Boca Raton, Florida

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

This case was decided by a majority-public panel.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant SunTrust Investment Services, Inc.: Andrew Froman, Esq., Fisher & Phillips LLP, Tampa, Florida.

Respondent Veronica Gillotte appeared pro se.

CASE INFORMATION

Statement of Claim filed on or about: September 27, 2018.

SunTrust Investment Services, Inc. signed the Submission Agreement: September 27, 2018.

Statement of Answer filed by Respondent on or about: December 4, 2020.

Veronica Gillotte signed the Submission Agreement: November 23, 2018.

Reply to Answer filed by Claimant on or about: December 20, 2018.

Counterclaim filed by Respondent on or about: March 11, 2019.

Answer and Defenses to Counterclaim filed by Claimant on or about: May 22, 2019.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the causes of action of breach of contract and specific performance. The causes of action relate to Respondent's alleged failure to repay sums due Claimant upon her termination of employment.

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

In the Reply to Answer, Claimant denied the allegations made in the Statement of Answer.

In the Counterclaim, Respondent asserted the causes of action of misrepresentation, breach of fiduciary duty and breach of contract. The causes of action relate to Respondent's employment with Claimant, including its recruiting practices.

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

RELIEF REQUESTED

In the Statement of Claim, Claimant requested compensatory damages in the amount of \$78,529.88, pre-judgment interest, costs, attorneys' fees, and any other relief deemed just and proper by the Panel.

In the Statement of Answer, Respondent did not specifically delineate a relief request.

In the Reply to Answer, Claimant asserted that the allegations set forth in Respondent's Statement of Answer do not constitute a counterclaim, but if the Panel deems it as such, then Claimant requested an extension of time to respond.

In the Counterclaim, Respondent requested compensatory damages in the amount of \$404,000.00.

In the Answer and Defenses to Counterclaim, Claimant requested that the Counterclaim be dismissed in its entirety, and that it be awarded its costs, including reasonable attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

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

On December 3, 2018, Claimant requested the initiation of default proceedings against Respondent pursuant to Rule 13801 of the Code of Arbitration Procedure (the "Code"). On or about December 4, 2018, Respondent filed a Statement of Answer, rendering Claimant's request for default impermissible under the Code.

Following its initial pre-hearing conference with the parties, the Panel issued an Order dated February 12, 2019 that, among other things, granted Respondent leave to file a Counterclaim in this matter.

On March 29, 2019, Claimant filed a Motion to Dismiss Claimant's Counterclaim as a sanction pursuant to Rule 13212 of the Code on the basis that Respondent did not seek leave of the Panel to amend her Answer in violation of Rule 13309 of the Code. Claimant further asserted that allowing a Counterclaim at this stage of the proceeding would cause an unreasonable delay because it would require the addition of two more arbitrators to the Panel pursuant to Rule 13401 of the Code. In her April 9, 2019 Response, Respondent stated, among other things, that, as a pro se party, she is in the learning process and thought she had already filed a Counterclaim in the initial Statement of Answer. As a result, Respondent requested that the Panel allow her Counterclaim to remain a part of this case. In its April 16, 2019 Reply, Claimant requested that if Respondent is permitted to proceed with her Counterclaim, Claimant be provided with 20 days to respond pursuant to Rule 13310 of the Code. On or about May 2, 2019, the Panel issued an Order that denied the Motion and provided Claimant with 20 days to respond to the Counterclaim.

Inasmuch as Respondent's Counterclaim contained a request for damages in excess of \$100,000.00, FINRA appointed two additional arbitrators to the Panel (previously consisting of one arbitrator) pursuant to Rule 13401(c) of the Code.

On March 9, 2021, Respondent filed a Motion to Dismiss Claimant's claims on the grounds that, among other things, she is no longer a registered representative and, therefore, under Article V, Section 4 of the FINRA Bylaws, FINRA does not have jurisdiction over her. In its March 17, 2021 Response, Claimant stated that Section 13101(a) of the Code mandates that "any dispute" between a member and a member firm, or two member firms, submitted for arbitration under Sections 13200, 13201 and 13202 of the Code must be arbitrated. Claimant further stated that Section 13101(b) mandates that if the arbitration is pursuant to an arbitration agreement, as this one is, then it is "incorporated by reference" into the FINRA Code of Arbitration. Moreover, Section 13200(a) of the Code states, in relevant part, "Except as otherwise provided in the Code, a dispute must be arbitrated under the Code if the dispute arises out of the business activities of a member or an associated person and is between or among Members, Members and Associated Person; or Associated Persons." In this instance, both Claimant and Respondent were members of FINRA at the time this dispute arose, and at the time of its filing, and Claimant's underlying agreement with Respondent contained a mandatory arbitration clause. On or about April 6, 2021, the Panel issued an Order that denied the Motion.

On July 13, 2021, Claimant filed a Motion to Strike Respondent's Pleadings for Failing to Comply with FINRA Discovery Obligations, in which Claimant requested that the Panel dismiss Respondent's Answer, Defenses and Counterclaim, with prejudice, pursuant to Rule 13511 of the Code. In her July 26, 2021 Response, Respondent stated that she sent initial discovery documents to Claimant's first attorney of record and attempted to contact Claimant's current counsel, who she asserted did not respond to her email. After hearing oral argument from the parties at the evidentiary hearing, the Panel denied the Motion.

On July 26, 2021, Claimant filed a Motion for Sanctions in which it reasserted that Respondent continued in her failure to abide by FINRA rules and discovery obligations. In her July 26, 2021 Response, Respondent requested that the Panel deny Claimant's request. After hearing oral argument from the parties at the evidentiary hearing, the Panel denied the Motion.

After all the evidence in this matter was presented, Respondent moved to dismiss Claimant's claims on the grounds that Claimant breached the contract first, to which Claimant objected. The Panel denied the Motion.

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. With respect to Claimant's claims, Respondent is liable for and shall pay to Claimant the sum of \$78,529.88 in compensatory damages, plus interest at the rate of 3% per annum from November 17, 2017 through payment of the Award in full.
2. With respect to Respondent's Counterclaim, Claimant is liable for and shall pay to Respondent the following:
 - \$14,000.00, representing the referral bonus that was due Respondent as of February 28, 2016, plus interest at the rate of 3% per annum from February 28, 2016 through payment of this Award in full; and
 - \$50,000.00, representing the revenue bonus that was due Respondent as of January 1, 2017, plus interest at the rate of 3% per annum from January 1, 2017, through payment of this Award in full.
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	= \$ 1,750.00
Counterclaim Filing Fee	= \$ WAIVED

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

FINRA Dispute Resolution Services previously deferred Respondent's counterclaim filing fee. Upon conclusion of the matter, the Panel determined to waive Respondent's counterclaim filing fee.

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	= \$ 1,100.00
Member Process Fee	= \$ 3,750.00

Postponement Fees

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

February 22-23, 2021, postponement requested by parties	= \$ 1,125.00
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Total Postponement Fees	= \$ 1,125.00
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The Panel has assessed the total \$1,125.00 in postponement fees to Claimant.

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:

February 22-23, 2021, cancellation requested parties	= \$ 1,800.00
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Total Last-Minute Cancellation Fees	= \$ 1,800.00
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The Panel has assessed the total \$1,800.00 in last-minute cancellation 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 Arbitrator(s), including a pre-hearing conference with the Arbitrator(s), which lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session with a single Arbitrator @ \$450.00/session	= \$ 450.00
Pre-Hearing Conference: February 12, 2019	1 session

Three (3) pre-hearing sessions with the Panel @ \$1,125.00/session	= \$ 3,375.00
Pre-Hearing Conferences: February 5, 2020	1 session
April 29, 2020	1 session
May 20, 2021	1 session

Three (3) hearing sessions @ \$1,125.00/session	= \$ 3,375.00
Hearings: August 2, 2021	2 sessions
August 3, 2021	1 session

Total Hearing Session Fees	= \$ 7,200.00
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Since an Arbitrator was unavailable for the scheduled telephonic pre-hearing conference on February 5, 2020, the \$1,125.00 hearing session fee for that pre-hearing conference has been waived.

The Panel has assessed the balance of the hearing session fees in the amount of \$6,075.00 to Claimant.

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

ARBITRATION PANEL

Kimberly A. Gilmour	-	Public Arbitrator, Presiding Chairperson
Robert G. Geeseman	-	Public Arbitrator
Susan M. Dunning	-	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

Kimberly A. Gilmour

Kimberly A. Gilmour
Public Arbitrator, Presiding Chairperson

08/10/2021

Signature Date

Robert G. Geeseman

Robert G. Geeseman
Public Arbitrator

08/09/2021

Signature Date

Susan M. Dunning

Susan M. Dunning
Non-Public Arbitrator

08/10/2021

Signature Date

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August 10, 2021

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