

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

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In the Matter of the Arbitration Between:

Claimant

Michael S. Gardner

Case Number: 18-03877

vs.

Respondents

Cantor Fitzgerald Investment Advisors, L.P.  
Cantor Fitzgerald Europe

Hearing Site: New York, New York

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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. Non-Members

This case was decided by a majority-public panel.

**REPRESENTATION OF PARTIES**

For Claimant Michael S. Gardner: Daniel Branower, Esq., Russo PLLC, New York, New York.

For Respondents Cantor Fitzgerald Investment Advisors, L.P., and Cantor Fitzgerald Europe: Nirav S. Shah, Esq., Cantor Fitzgerald, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: November 8, 2018.

Statement of Answer to the Counterclaim filed on or about: June 13, 2019.

Michael S. Gardner signed the Submission Agreement: November 8, 2018.

Joint Statement of Answer and Counterclaim filed by Respondents on or about: May 24, 2019.

Cantor Fitzgerald Investment Advisors, L.P. signed the Submission Agreement: May 24, 2019.

Cantor Fitzgerald Europe signed the Submission Agreement: May 24, 2019.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action: breach of Employment Agreement and the Secondment Agreement; breach of obligation of good faith and fair dealing; breach of fiduciary duty; tortious interference with Claimant's relationships with the customers and potential customers that he has built over a lifetime in the securities' industry,

thereby depriving Claimant of his prospective economic advantage of providing future services to these clients; and *per se* libel.

Unless specifically admitted in the Statement of Answer and Counterclaim, Respondents denied the allegations made in the Statement of Claim; asserted various affirmative defenses; and asserted the following Counterclaim: breach of promissory note (“the Note”).

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

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested that an award be entered jointly and severally against Respondents: on the first, second, and third claims for actual damages estimated to be no less than \$5,000,000.00, declaring that the Advanced Compensation Loan is deemed wholly and entirely forgiven, and amending Claimant’s Form U5 to reflect that he was not terminated for cause; on the third claim, for punitive damages of \$10,000,000.00; on the fourth and fifth claims, for actual damages estimated to be no less than \$10,000,000.00 and for punitive damages of \$10,000,000.00; on the fourth claim, for lost wages estimated to be no less than \$14,000,000.00; for the costs and disbursements of this action, including but not limited to filing fees and attorneys’ fees; and for such other, further, and different relief as the Panel deems just and proper.

In the Statement of Answer and Counterclaim, Respondents requested dismissal of the Statement of Claim, with prejudice; repayment of the loan issued under the Note in the amount of \$479,017.76; pre-judgment interest at the statutory rate of 9% per annum, as provided by CPLR §§ 5001, 5004; all costs and expenses, including the costs and disbursements of this arbitration, and reasonable attorneys’ fees as provided by the Note; and such other and further relief as is deemed just and proper.

In the Statement of Answer to the Counterclaim, Claimant requested that the Counterclaim be denied.

At the hearing, Claimant requested \$8,000,000.00 in compensatory damages and Respondents requested \$512,033.00 in compensatory damages.

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

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

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. Claimant’s claims are denied in their entirety.

2. Claimant is liable for and shall pay to Respondents the sum of \$512,033.00 in compensatory damages.
3. 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	=\$ 2,250.00
Counterclaim Filing Fee	=\$ 1,425.00

*\*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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Cantor Fitzgerald & Co. is assessed the following:

Member Surcharge	=\$ 4,025.00
Member Process Fee	=\$ 7,000.00

#### **Postponement Fees**

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

February 10-14, 2020, postponement requested by the parties	=\$ 1,500.00
May 7-8, 2020, postponement requested by Respondents	=\$ 1,500.00

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Total Postponement Fees	=\$ 3,000.00
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The Panel has assessed \$750.00 of the postponement fees to Claimant.

The Panel has assessed \$2,250.00 of the postponement fees jointly and severally to Respondents.

#### **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:

One (1) pre-hearing session with a single Arbitrator @ \$450.00/session	=\$ 450.00
Pre-Hearing Conference: February 26, 2020 1 session	

Three (3) pre-hearing sessions with the Panel @ \$1,500.00/session	=\$ 4,500.00
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Pre-Hearing Conferences:	June 29, 2019	1 session	
	May 7, 2020	1 session	
	January 4, 2021	1 session	
Nine (9) hearing sessions @ \$1,500.00/session			= \$ 13,500.00
Hearings:	August 2, 2021	2 sessions	
	August 3, 2021	2 sessions	
	August 4, 2021	2 sessions	
	August 5, 2021	2 sessions	
	August 6, 2021	1 session	
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Total Hearing Session Fees			= \$ 18,450.00

The Panel has assessed \$9,225.00 of the hearing session fees to Claimant.

The Panel has assessed \$9,225.00 of the hearing session fees jointly and severally to Respondents.

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

**ARBITRATION PANEL**

Phillip Weitzman	-	Public Arbitrator, Presiding Chairperson
Nancy Marie Thevenin	-	Public Arbitrator
Walter Arthur Saurack	-	Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

**Concurring Arbitrators' Signatures**

***Phillip Weitzman***

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Phillip Weitzman  
Public Arbitrator, Presiding Chairperson

**08/20/2021**

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

***Nancy Marie Thevenin***

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Nancy Marie Thevenin  
Public Arbitrator

**08/20/2021**

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

***Walter Arthur Saurack***

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Walter Arthur Saurack  
Non-Public Arbitrator

**08/23/2021**

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

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August 26, 2021

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