

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

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In the Matter of the Arbitration Between:

Claimant  
John M. Shubert

Case Number: 19-00960

vs.

Respondent  
CBIZ Financial Solutions, Inc.

Hearing Site: Orlando, Florida

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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. Member

**REPRESENTATION OF PARTIES**

For Claimant John M. Shubert (“Claimant”): Tucker H. Byrd, Esq. and Jonathan Camacho, Esq., Byrd Campbell, P.A., Winter Park, Florida.

For Respondent CBIZ Financial Solutions, Inc. (“Respondent”): Jeffrey S. Dunlap, Esq. and Michael J. Charlillo, Esq., Ulmer & Berne LLP, Cleveland, Ohio.

**CASE INFORMATION**

Statement of Claim filed on or about: April 9, 2019.  
Claimant signed the Submission Agreement: April 8, 2019.

Statement of Answer filed on or about: August 12, 2019.  
Respondent signed the Submission Agreement: August 12, 2019.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action: breach of contract and breach of covenant of good faith and fair dealing, and alleged that the Form U5 filed by Respondent, as part of registration records maintained by the Central Registration Depository (“CRD”) is defamatory in nature. The claim related to allegations that, after terminating Claimant without just cause, Respondent misappropriated Claimant’s entire book of business and falsely accused Claimant of failing to disclose outside business activities and not consistently meeting corporate sales goals.

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

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

- a) Damages for the lost income for the revenues he expected to make over the next ten (10) years of over \$200,000.00-\$300,000.00;
- b) Lost benefits for reimbursement of lost vacation compensation;
- c) Damages of approximately \$1,200,000.00, as a result of Claimant's lost book of business;
- d) A declaration that the covenants against competition in Claimant's agreements with Respondent are null and void;
- e) Expungement of Claimant's Form U5 filed by Respondent;
- f) Costs, expenses, and disbursements associated with his filing of this claim and defending and having to respond to FINRA inquiries regarding the language on the Form U5, including attorneys', expert fees, and interest;
- g) Punitive damages; and
- h) Such other relief as the Panel deems just and proper.

In the Statement of Answer, Respondent requested that the Panel deny each of the claims Claimant asserted against Respondent and award Respondent all costs incurred in having to defend this action.

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

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

The Panel has provided an explanation of the decision in this award. The explanation is for the information of the parties only and is not precedential in nature.

The Award in this matter may be executed in counterpart copies.

### **EXPLAINED DECISION**

The Panel finds that the termination clause of Claimant's Confidentiality and Non-Solicitation Agreement, effective January 1, 2005, sufficiently defined "just cause" or so-called "for cause" so it would be inappropriate for the Panel to look outside the agreement for guidance in defining, interpreting, and applying that phrase.

Claimant's request for compensation for lost income and lost vacation benefits is denied, since he was terminated for cause pursuant to the foregoing termination clause for failure to "strictly adhere to all the rules, regulations, and reporting requirements of the Securities and Exchange Commission, the NASD..." and failure to "strictly adhere to all operational, procedural and conduct rules as the Corporation has established for the conduct of its Registered Representatives, including, but not limited to, those set forth in the Corporation's compliance and procedure manuals..." with respect to disclosing and receiving approval for his outside business activities prior to engaging in them. Though Claimant provided substantial testimonial and documentary evidence that Respondent's Chief Compliance Officer ("CCO") was clearly

aware of Claimant's most significant outside business activities and the CCO did not ensure that Claimant complied with the applicable rules, regulations, and reporting requirements or Respondent's operational, procedural and conduct rules, it was ultimately Claimant's responsibility as a registered representative to comply. Furthermore, the Panel finds that Claimant was terminated for cause, pursuant to the foregoing termination clause, for failure "to meet production objectives as established by the Corporation or its affiliates and communicated to Claimant".

Claimant's request for compensation for his lost book of business is denied, since that book of business was purchased by Respondent via the Agreement and Plan of Merger, dated March 31, 1999.

Claimant's request for compensation for costs, expenses, and disbursements associated with having to respond to FINRA inquiries, regarding language on his Form U5, including attorneys' fees, expert's fees, and interest, and the filing of this claim is denied, since the termination was for cause pursuant to Confidentiality and Non-Solicitation Agreement and Respondent complied with the FINRA rule that required a Form U5 (to report the reason for termination) to be filed within 30 days of Claimant's employment end date.

Claimant's request for punitive damages for defamation is denied, since the information reported on the Form U5 is true and Respondent's disclosure is protected by a qualified privilege. Termination was for cause pursuant to Confidentiality and Non-Solicitation Agreement and Respondent complied with the FINRA rule that required a Form U5 to be filed within 30 days of Claimant's employment end date. Furthermore, Claimant has not shown that Respondent acted with actual malice in making such statements on the Form U5.

Claimant's request to declare the covenants against competition in Confidentiality and Solicitation Agreement null and void is denied. Respondent has presented compelling arguments, not overcome by Claimant, that its non-competition and non-solicitation covenants are reasonable and, thus, enforceable.

Claimant's request for expungement of the language in his Form U5 is also denied, since the information reported is accurate and not defamatory.

### **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's request for expungement of his form U5 is denied.
3. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, treble damages, and attorneys' fees, are denied.

## FEES

Pursuant to the Code of Arbitration Procedure, the following fees are assessed:

### Filing Fees

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

Initial Claim Filing Fee = \$ 2,000.00

*\*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, Respondent is assessed the following:

Member Surcharge = \$ 3,025.00

Member Process Fee = \$ 6,175.00

### 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: November 23, 2020 1 session  
November 24, 2020 1 session

Three (3) pre-hearing sessions with the Panel @ \$1,400.00/session = \$ 4,200.00  
Pre-Hearing Conferences: August 30, 2019 1 session  
June 9, 2020 1 session  
February 16, 2021 1 session

Eight (8) hearing sessions @ \$1,400.00/session = \$ 11,200.00  
Hearings: November 2, 2021 2 sessions  
November 3, 2021 2 sessions  
November 4, 2021 2 sessions  
November 5, 2021 2 sessions

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Total Hearing Session Fees = \$ 16,300.00

The Panel has assessed \$8,150.00 of the hearing session fees to Claimant.

The Panel has assessed \$8,150.00 of the hearing session fees to Respondent.

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

**ARBITRATION PANEL**

Mitchel Weiss	-	Public Arbitrator, Presiding Chairperson
Mauricio Arcadier	-	Public Arbitrator
Glenn W. Wheelock	-	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**

***Mitchel Weiss***

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Mitchel Weiss  
Public Arbitrator, Presiding Chairperson

**11/18/2021**

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Signature Date

***Mauricio Arcadier***

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Mauricio Arcadier  
Public Arbitrator

**11/18/2021**

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

***Glenn W. Wheelock***

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Glenn W. Wheelock  
Non-Public Arbitrator

**11/18/2021**

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

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November 18, 2021

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