

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Randee Paston

Case Number: 19-01058

vs.

Respondent
Cantor Fitzgerald & Co.

Hearing Site: New York, New York

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.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Randee Paston: Daniel J. Kaiser, Esq., and William H. Kaiser, Esq., Kaiser Saurborn & Mair, P.C., New York, New York.

For Respondent Cantor Fitzgerald & Co.: Emily L. Milligan, Esq., and Samantha Springer, Esq., Cantor Fitzgerald & Co., New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: April 17, 2019.

Randee Paston signed the Submission Agreement: April 17, 2019.

Statement of Answer to the Counterclaims filed on or about: July 25, 2019.

Statement of Answer and Counterclaims filed by Respondent on or about: July 8, 2019.

Cantor Fitzgerald & Co. signed the Submission Agreement: July 9, 2019.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: gender discrimination; retaliation; hostile working environment; marginalization and exclusion; wrongful termination; intentional civil rights violation, with malice; violation of Executive Law Section 296; and violation of NYC Administrative Code Section 8-502(c).

Unless specifically admitted in the Statement of Answer and Counterclaims, Respondent denied the allegations made in the Statement of Claim, asserted various affirmative defenses, and asserted the following causes of action: breach of contract; misappropriation of confidential information; breach of duty of loyalty; and faithless servant.

Claimant denied the allegations made in the Counterclaim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested compensatory damages in an amount to be determined at trial; punitive damages in an amount to be determined at trial; attorneys' fees; interest and disbursements; and such other relief as the Panel deems just and proper.

In the Statement of Answer and Counterclaims, Respondent requested that the Statement of Claim be dismissed in its entirety; an award in favor of Respondent on all claims; damages in an amount to be determined at the hearing; attorneys' fees; costs; expenses; and such other and further relief as the Panel deems appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

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

On February 28, 2020, Respondent filed a Motion to Dismiss the Statement of Claim to the extent it seeks relief relating to contingent, unvested partnership units granted by Respondent. On March 23, 2020, Claimant filed a response opposing the Motion to Dismiss. On April 6, 2020, Respondent filed a reply in further support of their Motion to Dismiss. On April 22, 2020, the Panel heard oral arguments on the Motion to Dismiss. On April 24, 2020, the Panel denied the Motion to Dismiss.

Prior to the conclusion of Claimant's case-in-chief, Respondent made a Motion to Dismiss Claimant's partnership claims. Claimant opposed the Motion but advised the Panel that they could award damages, including Claimant's partnership share, as an aspect of her damages. The Panel denied Respondent's Motion to Dismiss.

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 Counterclaims are denied.
3. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages and attorneys' fees, are denied.

ARBITRATORS' REPORT

The preponderance of the testimonial and documentary evidence establishes that Claimant was not subjected to a hostile work environment, gender discrimination, retaliation, constructive discharge, or any other illegal employment activity either before or after the Credit Suisse traders joined Cantor Fitzgerald & Co. All of Claimant's claims arising under the New York State and New York City Human Rights laws are either time barred and/or belied by the weight of the credible evidence. In sum, all her claims under the New York State and New York City Human Rights laws fail and she is not entitled to any damages. Because the separation package that she rejected was not the product of any discriminatory behavior on Respondent's part, the Panel has no basis or legal authority to reinstate that offer.

With respect to Respondent's counterclaim, it is undisputed that Claimant violated her contractual and other obligations by emailing Confidential Information to herself. While she had *mens rea* based on her attempts to disguise the transfers by using false designations on her emails, it is undisputed that she did not use the Confidential Information to Respondent's disadvantage. Accordingly, the Panel will not award Respondent any damages by reason of Claimant's violations.

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	= \$	200.00
Counterclaim Filing Fee	= \$	1,700.00

*Ranee Paston is assessed a \$200.00 filing fee in accordance with Rule 13802 of the Code. The balance of the non-refundable portion of the filing fee, in the amount of \$175.00, is assessed to Cantor Fitzgerald & Co.

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, as a party, Respondent Cantor Fitzgerald & Co. is assessed the following:

Member Surcharge	= \$	1,900.00
Member Process Fee	= \$	3,750.00

Late Pre-Hearing Cancellation Fees

Fees apply when a pre-hearing conference is cancelled within three business days of the scheduled conference:

March 25, 2020, cancellation requested by the parties	= \$	100.00
May 21, 2020, cancellation requested by the parties		WAIVED
September 25, 2020, cancellation requested by Claimant	= \$	300.00
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Total Late Pre-Hearing Cancellation Fees	= \$	400.00

The Panel has assessed \$350.00 of the late pre-hearing cancellation fees to Claimant.

The Panel has assessed \$50.00 of the late pre-hearing cancellation 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:

One (1) pre-hearing session with a single Arbitrator @ \$450.00/session	= \$	450.00
Pre-Hearing Conference: April 6, 2020	1 session	
Four (4) pre-hearing sessions with the Panel @ \$1,125.00/session	= \$	4,500.00
Pre-Hearing Conferences: October 8, 2019	1 session	
April 22, 2020	1 session	
June 2, 2020	1 session	
October 29, 2020	1 session	
Eleven (11) hearing sessions @ \$1,125.00/session	= \$	12,375.00
Hearings: December 3, 2020	2 sessions	
December 4, 2020	2 sessions	
December 7, 2020	2 sessions	
December 8, 2020	2 sessions	
December 9, 2020	1 session	
January 22, 2021	2 sessions	
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Total Hearing Session Fees	= \$	17,325.00

The Panel has assessed the total hearing session fees to Respondent Cantor Fitzgerald & Co. in accordance with Rule 13802 of the Code.

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

ARBITRATION PANEL

Joan Maxine Secofsky	-	Public Arbitrator, Presiding Chairperson
Roberta Wolf	-	Public Arbitrator
Paula Ellen Berg	-	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

Joan Maxine Secofsky

Joan Maxine Secofsky
Public Arbitrator, Presiding Chairperson

02/23/2021

Signature Date

Roberta Wolf

Roberta Wolf
Public Arbitrator

02/24/2021

Signature Date

Paula Ellen Berg

Paula Ellen Berg
Public Arbitrator

02/24/2021

Signature Date

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February 25, 2021

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