

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

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In the Matter of the Arbitration Between:

Claimant  
Katalyst Securities LLC

Case Number: 19-01403

vs.

Respondent  
Marker Therapeutics, Inc.

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: Member vs. Non-Member

This case was decided by a majority-public panel.

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimant Katalyst Securities LLC: Adam B. Oppenheim, Esq., Harris, St. Laurent & Chaudhry LLP, New York, New York.

For Respondent Marker Therapeutics, Inc.: Eric A. Kuwana, Esq., Alston & Bird LLP, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: May 20, 2019.

Katalyst Securities LLC signed the Submission Agreement: May 20, 2019.

Statement of Answer filed by Respondent on or about: July 17, 2019.

Marker Therapeutics, Inc. signed the Submission Agreement: July 15, 2019.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action: breach of contract and unjust enrichment.

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 compensatory damages in an amount to be determined at a hearing, but in no event less than \$945,626.65, together with interest calculated from the date on which such amounts were first due and owing; an award of all fees and expenses incurred by Claimant, including any filing fees and reasonable attorneys' fees as provided for in the Agreement; and such other and further relief as the Panel deems appropriate.

In the Statement of Answer, Respondent requested that the Statement of Claim be denied in its entirety; that judgment be entered in favor of Respondent on all claims; that the Panel award Respondent its attorneys' fees, costs, and expenses incurred in defense of this action; and that the Panel award any such other and further relief as may be appropriate.

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

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

In the Statement of Answer, Respondent objected to FINRA's jurisdiction over this matter. Claimant filed a response to the objection on July 29, 2019. After due deliberation and by Order dated October 30, 2019, the Panel determined that FINRA has jurisdiction over this matter pursuant to the terms of the parties' agreement.

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.

### **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. Respondent is liable for and shall pay to Claimant the sum of \$1,798,501.00 in compensatory damages.
2. Respondent is liable for and shall pay to Claimant interest on the amount of \$234,751.00 at the rate of 3% per annum from May 14, 2018 through and including the date of the award.
3. Respondent is liable for and shall pay to Claimant interest on the amount of \$1,563,750.00 at the rate of 3% per annum from October 17, 2018 through and including the date of the award.
4. Respondent is liable for and shall pay to Claimant the sum of \$450,000.00 in attorneys' fees pursuant to the parties' agreement.

5. Any and all claims for relief not specifically addressed herein are denied.

### **ARBITRATORS' EXPLANATION OF DECISION**

The claim has two parts, a cash compensation and the award of warrants. The Panel determined that Claimant's calculation of the cash equivalent for the warrants was inappropriate. Claimant assumed that the warrants would have been sold over the fourth quarter of 2018 for an average price of \$5.94. The Panel believes that a more appropriate method of calculation is to use the closing price of Marker on the day the warrants should have been received. Those prices were \$3 a share on May 14, 2018, and \$8.34 per share on October 17, 2018. Using these figures, the cash equivalent award for the warrants is \$39,125.00 and \$813,750.00 respectively, or a total of \$852,875.00 This exceeds the amount claimed for the warrants of \$631,601.00 by some \$221,274.00.

### **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

*\*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 firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Katalyst Securities LLC 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:

April 14, 16, 17, & 22, 2020, postponement requested by Respondent WAIVED

#### **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:

Eight (8) pre-hearing sessions with the Panel @ \$1,300.00/session = \$ 10,400.00  
Pre-Hearing Conferences: September 25, 2019 1 session  
December 13, 2019 1 session  
April 14, 2020 1 session  
May 6, 2020 1 session  
August 25, 2020 1 session

October 14, 2020	1 session
November 12, 2020	1 session
February 16, 2021	1 session

Nine (9) hearing sessions @ \$1,300.00/session = \$ 11,700.00

Hearings:	May 4, 2021	2 sessions
	May 5, 2021	2 sessions
	May 6, 2021	2 sessions
	June 2, 2021	2 sessions
	June 3, 2021	1 session

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Total Hearing Session Fees = \$ 22,100.00

The Panel has assessed \$11,050.00 of the hearing session fees to Claimant.

The Panel has assessed \$11,050.00 of the hearing session fees to Respondent.

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

**ARBITRATION PANEL**

Robert E. Anderson	-	Public Arbitrator, Presiding Chairperson
John F. Duane	-	Public Arbitrator
David Stein	-	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**

***Robert E. Anderson***

Robert E. Anderson  
Public Arbitrator, Presiding Chairperson

**08/12/2021**

Signature Date

***John F. Duane***

John F. Duane  
Public Arbitrator

**08/12/2021**

Signature Date

***David Stein***

David Stein  
Non-Public Arbitrator

**08/13/2021**

Signature Date

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August 16, 2021

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