

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Wells Fargo Clearing Services, LLC

Case Number: 19-01560

vs.

Respondent
James Christopher Shelburne

Hearing Site: Los Angeles, California

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

REPRESENTATION OF PARTIES

For Claimant Wells Fargo Clearing Services, LLC (“Claimant”): G. Thomas Fleming III, Esq., Jones, Bell, Abbott, Fleming & Fitzgerald L.L.P., Los Angeles, California.

Respondent James Christopher Shelburne (“Respondent”) appeared pro se.

CASE INFORMATION

Statement of Claim filed on or about: June 4, 2019.

Response to Counterclaim filed on or about: October 14, 2019.

Claimant signed the Submission Agreement: June 4, 2019.

Statement of Answer and Counterclaim filed by Respondent on or about: September 18, 2019.

Respondent signed the Submission Agreement: October 2, 2019.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: breach of promissory note (“Note”) executed by Respondent dated May 29, 2015 and for common count – money had and received. Claimant asserted that the remaining balance of the Note became due upon the termination of Respondent’s employment with Claimant.

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

In the Counterclaim, Respondent asserted the following causes of action: fraud; breach of fiduciary duty; negligence (gross negligence); and breach of contract.

In the Response 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:

1. Damages in the principal sum of \$671,590.79;
2. Interest at the rate of 5.28% per annum from August 6, 2018 to the date of entry of the Panel's Award;
3. Attorneys' fees;
4. Assessment of all forum fees and costs incurred in connection with this action against Respondent; and
5. Such other and further relief as the Panel may deem just and proper.

In the Statement of Answer and Counterclaim, Respondent requested:

1. Compensatory damages yet to be determined;
2. Punitive damages yet to be determined;
3. Pre-award and post-award interest, at the legal rate;
4. All costs incurred in connection with the proceeding;
5. Attorneys' fees;
6. \$234,333.00 in losses realized and potential future returns from Eros stock investment;
7. \$39,000.00 of compensation due for the recruitment of Unnamed Party Thomas Birk to Respondent; and
8. Such further relief as the Panel deems just and appropriate.

In the Response to the Counterclaim, Claimant requested all of Respondent's claims be dismissed with prejudice.

At the hearing, Respondent requested damages in the amount of \$1,710,546.00.

OTHER ISSUES CONSIDERED AND DECIDED

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

On December 6, 2021, Claimant filed a Motion in Limine to Exclude Irrelevant Evidence and a Motion to Strike. No response was received. By an order dated December 20, 2021, the Chairperson denied Claimant's motions.

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, a majority of 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 \$671,591.00 in compensatory damages.
2. Respondent is liable for and shall pay to Claimant the sum of \$52,607.00 in interest, which is based on the above-stated sum at the rate of 2.28% per annum from August 6, 2018 through and including January 13, 2022.
3. Respondent is liable for and shall pay to Claimant the sum of \$80,365.00 in attorneys' fees pursuant to the Note.
4. Respondent is liable for and shall pay to Claimant \$625.00 to reimburse Claimant for one-half of the non-refundable portion of the filing fee previously paid to FINRA Dispute Resolution Services.
5. Claimant is liable for and shall pay to Respondent the sum of \$775,908.00 in compensatory damages.
6. This Award is subject to an offset as described in item 7 below. Claimant's obligations are extinguished by the offset.
7. Respondent's award in the total amount of \$775,908.00 is an offset to Claimant's award in the total amount of \$805,188.00, which includes compensatory damages, interest, attorneys' fees, and partial reimbursement of the filing fee as stated above in item 1-4. As such, Respondent is liable for and shall pay to Claimant the amount of \$805,188.00 minus \$775,908.00 awarded to Respondent, for a net amount due to Claimant of \$29,280.00.
8. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, are denied.

DISSENT

The Chairperson respectfully dissents from the award of damages on the Counterclaim. The Chairperson would not award any amount to Respondent.

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	= \$	2,550.00
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(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	= \$	2,475.00
Member Process Fee	= \$	5,075.00

Discovery-Related Motion Fees

Fees apply for each decision rendered on a discovery-related motion.

One (1) decision on a discovery-related motion on the papers with one (1) Arbitrator @ \$200.00/decision	= \$	200.00
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Respondent submitted one (1) discovery-related motion

Total Discovery-Related Motion Fees	= \$	200.00
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The Panel has assessed \$100.00 of the discovery-related motion fees to Claimant.

The Panel has assessed \$100.00 of the discovery-related motion 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 Arbitrator(s), including a pre-hearing conference with the Arbitrator(s), which lasts four (4) hours or less. Fees associated with these proceedings are:

Four (4) pre-hearing sessions with the Panel @ \$1,300.00/session	= \$	5,200.00
Pre-Hearing Conferences: November 13, 2019	1 session	
April 14, 2020	1 session	
July 9, 2020	1 session	
March 24, 2021	1 session	

Seven (7) hearing sessions @ \$1,300.00/session	= \$	9,100.00
Hearings: January 10, 2022	2 sessions	
January 11, 2022	2 sessions	
January 12, 2022	2 sessions	
January 13, 2022	1 session	

Total Hearing Session Fees	= \$	14,300.00
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The Panel has waived \$2,600.00 of the hearing session fees.

The Panel has assessed \$5,850.00 of the hearing session fees to Claimant.

The Panel has assessed \$5,850.00 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Kendall C. Reed	-	Public Arbitrator, Presiding Chairperson
Aurelio A. Garcia	-	Public Arbitrator
Barton J. Brewer	-	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

Aurelio A. Garcia

Aurelio A. Garcia
Public Arbitrator

01/21/2022

Signature Date

Barton J. Brewer

Barton J. Brewer
Non-Public Arbitrator

01/21/2022

Signature Date

Dissenting Arbitrator's Signature

Kendall C. Reed

Kendall C. Reed
Public Arbitrator, Presiding Chairperson

01/21/2022

Signature Date

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January 21, 2022

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