

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

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In the Matter of the Arbitration Between:

Claimant  
Citigroup Global Markets, Inc.

Case Number: 19-01670

vs.

Respondent  
Mildred Patubo

Hearing Site: San Francisco, California

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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. Associated Person

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimant Citigroup Global Markets, Inc. (“Claimant”): Erin MacAvoy, Esq., Alonso, Andalkar & Facher, P.C., New York, New York.

For Respondent Mildred Patubo (“Respondent”): Benjamin Winograd, Esq., HLBS Law, Westminster, Colorado.

**CASE INFORMATION**

Statement of Claim filed on or about: June 13, 2019.

Claimant’s Answer to Counterclaim filed on or about: October 24, 2019

Claimant signed the Submission Agreement: June 10, 2019.

Statement of Answer filed by Respondent on or about: September 6, 2019.

Counterclaim filed by Respondent on: September 6, 2019.

Respondent signed the Submission Agreement: September 3, 2019.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted breach of contract as the sole cause of action. The cause of action relates to a promissory note executed by Respondent as part of her 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 her Counterclaim, Respondent asserted the following causes of action against Claimant: constructive discharge; violation of the California Labor Code; breach of the covenant of good faith and fair dealing; interference with prospective business advantage; infliction of emotional distress; and violations of FINRA Rule 2010. The causes of action relate to alleged defamatory, false and misleading statements on Respondent's Form U5 filed by Claimant and maintained by the Central Registration Depository ("CRD").

In its Answer to Respondent's Counterclaim, Claimant denied the allegations made in the Respondent's Counterclaim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

1. Compensatory damages in the amount of \$275,515.34;
2. Interest at the rate of 1.68% per annum;
3. Unpaid taxes in the amount of \$18,720.85;
4. All costs, fees, and distributions of this action, including attorneys' fees; and
5. Such other and further relief as the Panel may deem just, proper and equitable.

In the Statement of Answer, Respondent requested:

1. Dismissal of Claimant's claims in their entirety;
2. Attorneys' fees and costs;
3. Reimbursement of all forum fees and costs;
4. An award of any and all relief sought by way of Respondent's Counterclaim; and
5. Such other and further relief the Panel deems just and proper.

In the Counterclaim, Respondent requested:

1. Compensatory damages of no less than \$1,000,000.00, including lost income and earnings;
2. Punitive damages in an amount to be ascertained at the evidentiary hearing;
3. Expungement of the "Reason for Termination" and "Termination Explanation" in Section 3 of the Form U5 filed by Claimant on or around February 22, 2019 for Respondent (CRD Number 2458479) with the "Reason for Termination" expunged changed to "Other", the "Termination Explanation" expunged and changed to "Terminated without Cause";
4. Expungement of the "Yes" answer to the foregoing Form U5, Questions 7B, 7F(1) and 7F(2), an Order that it will be changed to "No", and the accompanying Termination Disclosure Reporting Pages be deleted in their entirety;
5. Expungement of any reference to, or subsequent disclosures concerning the events at issue in the instant Arbitration, including Respondent's Form U4 and, in particular,

Question 14J(1);

6. A finding by the Panel that its recommendations for expungement shall apply to all subsequent disclosures concerning this event, and that the recommendations are based on the defamatory nature of the information;
7. A declaration that Claimant is required to pro-rate any purported amounts due and owing by Respondent under any promissory note agreement(s) entered into between the parties, or alternatively, that the damages incurred by Respondent as a result of Claimant's misconduct exceed any such amounts, such that Respondent is entitled to full discharge, offset and/or forgiveness of any such amounts and the promissory note agreement(s) in question is/are therefore null and void;
8. An Order requiring Claimant to provide a full and complete accounting of all sums improperly withheld;
9. Attorneys' fees and costs;
10. Reimbursement of all forum fees and costs; and
11. Such other and further relief that the Panel deems just and proper under the circumstances.

In the Answer to Respondent's Counterclaim, Claimant requested:

1. Respondent's Counterclaim be dismissed in its entirety;
2. Denial of all monetary and equitable relief sought in the Counterclaim;
3. Relief sought in its Statement of Claim;
4. All costs, fees, and disbursements of this action, including attorneys' fees and costs; and
5. Such other and further relief the Panel may deem just, proper and equitable.

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

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

On January 21, 2021, the parties filed a Joint Stipulation of Dismissal of All Claims. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim or the Respondent's Counterclaim except Respondent's request for expungement.

On January 29, 2021, Respondent filed a Motion to Amend the Statement of Answer to provide additional information on the expungement request. On February 2, 2021, Claimant filed a declaration to oppose Respondent's request for expungement. The Panel granted Respondent's Motion to Amend the Statement of Answer during the hearing on February 11, 2021.

The Panel conducted a recorded hearing by videoconference on February 11, 2021, so the parties could present oral argument and evidence on Respondent's request for expungement.

Claimant did not participate in the expungement hearing and, as stated in the declaration, opposed the request for expungement.

The Panel reviewed Respondent's BrokerCheck® Report. The Panel noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrence in the CRD.

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's request for expungement of her Form U5 is denied.
2. Any and all claims for relief not specifically addressed herein 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	= \$ 2,125.00
Counterclaim Claim Filing Fee	= \$ 2,000.00

*\*The filing fee is made up of a non-refundable and a refundable portion.*

Pursuant to Armendariz v. Foundation Health Psychcare Services, Inc., 24 Cal. 4<sup>th</sup> 83 (2000) Respondent is assessed a \$200.00 counterclaim filing fee. The balance of the non-refundable portion of the filing fee, in the amount of \$400.00, is assessed to Claimant.

#### **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 event(s) giving rise to the dispute. Accordingly, as a party Claimant is assessed the following:

Member Surcharge	= \$ 1,900.00
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:

One (1) pre-hearing session with a single Arbitrator @ \$450.00/session	= \$ 450.00
Pre-Hearing Conference: October 7, 2020	1 session
One (1) pre-hearing session with the Panel @ \$1,400.00/session	= \$ 1,400.00
Pre-Hearing Conference: December 4, 2019	1 session
One (1) hearing session on expungement request @ \$1,400.00/session	= \$ 1,400.00
Hearing: February 11, 2021	1 session

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Total Hearing Session Fees = \$ 3,250.00

Pursuant to Armendariz v. Foundation Health Psychcare Services, Inc., 24 Cal. 4<sup>th</sup> 83 (2000), the Panel has assessed \$3,250.00 of the hearing session fees to Citigroup Global Markets, Inc.

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

**ARBITRATION PANEL**

Alden Sharp Adkins	-	Public Arbitrator, Presiding Chairperson
Dennis Markham Smith	-	Public Arbitrator
Eduardo Barocio	-	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**

***Alden Sharp Adkins***

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Alden Sharp Adkins  
Public Arbitrator, Presiding Chairperson

***02/26/2021***

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

***Dennis Markham Smith***

\_\_\_\_\_  
Dennis Markham Smith  
Public Arbitrator

***02/26/2021***

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

***Eduardo Barocio***

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Eduardo Barocio  
Non-Public Arbitrator

***03/01/2021***

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

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March 03, 2021

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