

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

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In the Matter of the Arbitration Between:

Claimant

Mark Raymond Sitter

Case Number: 19-02940

vs.

Respondents

Calton & Associates, Inc. and  
Capital Financial Services, Inc.

Hearing Site: Houston, Texas

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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. Members

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimant Mark Raymond Sitter (“Claimant”): Esther Cortez Treneer, Esq., Esther Cortez Treneer Law, Houston, Texas.

For Respondent Calton & Associates, Inc. (“Calton”): Martin S. Schexnayder, Esq. and Turner Johnston, Esq., Winget, Spadafora & Schwartzberg, L.L.P., Houston, Texas.

For Respondent Capital Financial Services, Inc. (“CFS”): Gordon Dihle, Esq., Corporate Legal, LLC, Agate, Colorado.

**CASE INFORMATION**

Statement of Claim filed on or about: October 1, 2019.

Amended Statement of Claim filed on or about: June 1, 2020.

Response to Counterclaim filed on or about: December 20, 2019.

Claimant signed the Submission Agreement: September 30, 2019.

Statement of Answer filed by Calton on or about: November 7, 2019.

Calton signed the Submission Agreement: November 7, 2019.

Statement of Answer and Counterclaim filed by CFS on or about: December 5, 2019.

CFS signed the Submission Agreement: November 18, 2019.

### **CASE SUMMARY**

In the Statement of Claim, as amended, Claimant asserted the following causes of action: breach of contract, unjust enrichment, fraud, tortious interference with business relations, and defamation. The causes of action relate to Claimant's allegation that, while he was employed with CFS, CFS reported incorrect information on Claimant's BrokerCheck® Report regarding customer complaints against CFS. Claimant alleged that Calton is liable to Claimant under a theory of successor liability, and further, breached an agreement to rehire Claimant after Carlton's acquisition of CFS.

Unless specifically admitted in the Statement of Answer, Calton denied the allegations made in the Statement of Claim.

Unless specifically admitted in the Statement of Answer and Counterclaim, CFS denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In the Counterclaim, CFS asserted the following cause of action: indemnification. The cause of action related to CFS's allegation that, pursuant to a representative agreement between CFS and Claimant, Claimant is required to indemnify CFS for legal fees, arbitration fees, as well as any settlement or award as a result of the customer complaints filed against it.

Unless specifically admitted in the Response to Counterclaim, Claimant denied the allegations made in the Counterclaim.

### **RELIEF REQUESTED**

In the Statement of Claim, as amended, Claimant requested actual damages between \$3,000,000.00 and \$5,000,000.00; punitive damages between \$5,000,000.00 and \$10,000,000.00; pre-award interest; that Respondents be required to pay Claimant's filing fee and all forum fees charged by FINRA; and such other and further relief as the Panel deems just and equitable.

In the Statement of Answer, Calton requested that the Panel dismiss all claims against Calton in their entirety, enter an award in favor of Calton, award Calton its attorneys' fees, forum fees, expert witness expenses and other costs incurred in defending this matter, and such other and further relief to which it is justly and equitably entitled.

In the Statement of Answer, CFS requested that the Panel dismiss all claims against CFS in their entirety, enter an award in favor of CFS, award CFS its attorneys' fees, forum fees and costs incurred in connection with this proceeding, and grant such other and further relief to which CFS is justly and equitably entitled. In its Counterclaim, CFS requested an award of \$89,496.32 plus additional amounts that continued to accrue, pre-judgment interest, attorneys' fees and costs, filing and forum fees, and such other and further relief as the Panel deems just and proper under the circumstances.

In the Response to Counterclaim, Claimant restated the request for relief in the Statement of Claim.

**OTHER ISSUES CONSIDERED AND DECIDED**

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

On June 1, 2020, Claimant filed a Motion for Leave to File Amended Statement of Claim (“Motion to Amend”). On June 10, 2020, CFS filed an Opposition to the Motion to Amend. On June 11, 2020, Claimant filed a Reply to CFS’s Response to the Motion to Amend. In an Order dated June 17, 2020, the Panel granted Claimant’s Motion to Amend.

On December 16, 2020, Calton filed a Motion for Sanctions against Claimant. On December 22, 2020, Claimant filed a Response to Calton’s Motion for Sanctions and a Motion for Sanctions against Calton. On January 13, 2021, Calton filed a Response to Claimant’s Motion for Sanctions. In an Order dated January 13, 2021, the Panel denied both Motions for Sanctions.

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. Claimant’s claims are denied in their entirety.
2. CFS’s Counterclaim 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	= \$	2,250.00
Counterclaim 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 firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as parties, Calton and CFS are each assessed the following:

Member Surcharge	= \$	4,025.00
Member Process Fee	= \$	7,000.00

**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

Two (2) decisions on a discovery-related motion on the papers with the Panel @ \$600.00/decision = \$ 1,200.00

Claimant submitted One (1) discovery-related motion.

Calton submitted Two (2) discovery-related motions

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Total Discovery-Related Motion Fees = \$ 1,400.00

The Panel has assessed \$938.00 of the discovery-related motion fees to Claimant.

The Panel has assessed \$462.00 of the discovery-related motion fees to CFS.

**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:

Three (3) pre-hearing sessions with the Panel @ \$1,500.00/session = \$ 4,500.00  
Pre-Hearing Conferences: January 24, 2020 1 session  
November 12, 2020 1 session  
March 29, 2021 1 session

Two (2) hearing sessions @ \$1,500.00/session = \$ 3,000.00  
Hearings: August 24, 2021 2 sessions

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Total Hearing Session Fees = \$ 7,500.00

The Panel has assessed \$5,025.00 of the hearing session fees to Claimant.

The Panel has assessed \$2,475.00 of the hearing session fees to CFS.

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

**ARBITRATION PANEL**

Stephanie E. Simmons	-	Public Arbitrator, Presiding Chairperson
James Wallace Boeckman	-	Public Arbitrator
Curtis Jay Meador	-	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**

***Stephanie E. Simmons***

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Stephanie E. Simmons  
Public Arbitrator, Presiding Chairperson

**08/27/2021**

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Signature Date

***James Wallace Boeckman***

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James Wallace Boeckman  
Public Arbitrator

**08/27/2021**

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

***Curtis Jay Meador***

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Curtis Jay Meador  
Non-Public Arbitrator

**08/28/2021**

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

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August 30, 2021

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