

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Charles S. Hall

Case Number: 19-03258

vs.

Respondents
Kingsbury Capital, Inc.,
Asher D. Wolmark, and
William D. Vellon

Hearing Site: Orlando, Florida

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 and Associated Persons

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Charles S. Hall (“Claimant”): Victor L. Hayslip, Esq. and B. Benjamin Coulter, Esq., Burr & Forman LLP, Birmingham, Alabama.

For Respondents Kingsbury Capital, Inc. (“Kingsbury”), Asher D. Wolmark, and William D. Vellon (collectively, “Respondents”): Nicholas P. Iavarone, Esq., The Iavarone Law Firm, P.C., Chicago, Illinois.

CASE INFORMATION

Statement of Claim filed on or about: October 31, 2019.
Claimant signed the Submission Agreement: November 1, 2019.

Statement of Answer filed by Respondents on or about: December 19, 2019.
Respondents signed the Submission Agreements: December 19, 2019.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: breach of contract, fraud and suppression, civil theft (Fla. Stat. Ann. § 772.11), unjust enrichment, conversion, violation of the Florida Communications Fraud Act (Fla. Stat. Ann. § 817.034), and conspiracy. The causes of action related to Claimant’s allegations that Respondents stole Claimant’s commissions and tried to cover up the theft by sending Claimant falsified documents.

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

RELIEF REQUESTED

In the Statement of Claim, Claimant requested an award of compensatory damages, punitive damages, interest, costs, attorneys' fees, and all other relief available.

In the Statement of Answer, Respondents requested that the Statement of Claim be dismissed with prejudice.

After the hearing, Claimant filed a Corrected Itemization of Damages, requesting \$34,983.00 in compensatory damages, \$2,958.69 in pre-judgment interest, \$83,488.44 in attorneys' fees, hearing fees and all other arbitration fees, \$104,949.00 in treble damages, and \$25,000.00 in punitive damages.

OTHER ISSUES CONSIDERED AND DECIDED

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

On July 30, 2020, Claimant filed a Motion for Default and for Sanctions Against All Respondents ("Motion for Default"). On August 4, 2020, Respondents filed an Opposition to the Motion for Default. On August 6, 2020, Claimant filed a Response to the Opposition to the Motion for Default. On September 2, 2020, the Panel heard oral arguments on the Motion for Default. In an Order dated September 9, 2020, the Panel ordered Respondents to comply with the Panel's Order dated July 4, 2020, regarding discovery, and denied without prejudice Claimant's Motion for Default.

On October 1, 2020, Claimant filed a Motion to Compel and to Require Compliance with Panel's Order ("Motion to Compel"). On October 8, 2020, Respondents filed an Opposition to the Motion to Compel. On October 14, 2020, Claimant filed a Reply to the Opposition to the Motion to Compel. In an Order dated October 28, 2020, the Panel granted Claimant's Motion to Compel in part, as to discovery, and denied without prejudice Claimant's request for attorneys' fees and other legal expenses incurred in bringing the Motion to Compel.

On October 22, 2020, Claimant filed a Motion for a Final Hearing, requesting that the final hearing take place in-person or by Zoom. On October 25, 2020, Respondents filed an Opposition to the Motion for a Final Hearing. On October 26, 2020, Claimant filed a Reply to the Opposition to the Motion for a Final Hearing. In an Order dated October 28, 2020, the Panel ruled that the hearing would be held by Zoom.

On December 2, 2020, Claimant filed a Motion for Sanctions, Striking of All Defenses, and Default for Respondents' Intentional Disregard of Panel's October 28, 2020 Order ("Motion for Sanctions"). On December 8, 2020, Respondents filed an Opposition to Motion for Sanctions. On December 9, 2020, Claimant filed a Reply to the Opposition to Motion for Sanctions. On January 21, 2021, the Panel heard oral arguments on the Motion for Sanctions. In an Order dated the same day, the Panel denied the Motion for Sanctions without prejudice.

At the hearing, Claimant reasserted his request for sanctions. Herein, the Panel grants Claimant's request for sanctions on the grounds that Respondents consistently and repeatedly ignored the Panel's Orders to comply with discovery and never produced certain documents that they were ordered to produce.

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. Respondents are jointly and severally liable for and shall pay to Claimant the sum of \$34,983.00 in compensatory damages.
2. Respondents are jointly and severally liable for and shall pay to Claimant the sum of \$2,958.69 in pre-award interest through March 11, 2021.
3. Respondents are jointly and severally liable for and shall pay to Claimant post-award interest on the above-stated sum at the Florida statutory rate from the date of the Award through and including the date the Award is paid in full.
4. Respondents are jointly and severally liable for and shall pay to Claimant the sum of \$83,488.44 in attorneys' fees as a sanction, pursuant to Rule 13212 of the Code of Arbitration Procedure ("Code"), the Registered Representative Agreement, and Fla. Stat. § 57.105(7).
5. Respondents are jointly and severally liable for and shall pay to Claimant the sum of \$375.00 to reimburse Claimant for the non-refundable portion of the filing fee previously paid to FINRA Dispute Resolution Services.
6. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages and treble damages, are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

FINRA Dispute Resolution Services assessed a filing fee* for each claim:

Initial Claim Filing Fee	= \$ 1,575.00
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**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 that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, as a party, Kingsbury 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:

January 11, 2021, cancellation requested by Respondents	= \$	300.00
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Total Late Pre-Hearing Cancellation Fees	= \$	300.00

The Panel has assessed the total late pre-hearing cancellation fees jointly and severally to Respondents.

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
One (1) decision on a discovery-related motion on the papers with the Panel @ \$600.00/decision	= \$	600.00

Claimant submitted two (2) discovery-related motions

Total Discovery-Related Motion Fees	= \$	800.00
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The Panel has assessed the total discovery-related motion fees jointly and severally to Respondents.

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 @ \$1,125.00/session	= \$	3,375.00
Pre-Hearing Conferences:		
March 10, 2020	1 session	
September 2, 2020	1 session	
January 21, 2021	1 session	
Six (6) hearing sessions @ \$1,125.00/session	= \$	6,750.00
Hearings:		
February 8, 2021	2 sessions	
February 9, 2021	2 sessions	
March 11, 2021	2 sessions	

Total Hearing Session Fees = \$ 10,125.00

The Panel has assessed \$562.50 of the hearing session fees to Claimant.

The Panel has assessed \$9,562.50 of the hearing session fees jointly and severally to Respondents.

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

ARBITRATION PANEL

Gayle B. Carlson	-	Public Arbitrator, Presiding Chairperson
Denise Morris Hammond	-	Public Arbitrator
Lane A. Fentriss, Jr.	-	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

Gayle B. Carlson

Gayle B. Carlson
Public Arbitrator, Presiding Chairperson

04/09/2021

Signature Date

Denise Morris Hammond

Denise Morris Hammond
Public Arbitrator

04/08/2021

Signature Date

Lane A. Fentriss, Jr.

Lane A. Fentriss, Jr.
Non-Public Arbitrator

04/09/2021

Signature Date

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April 09, 2021

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