

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

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In the Matter of the Arbitration Between:

Claimant  
J.P. Morgan Securities, LLC

Case Number: 19-03501

vs.

Respondents  
Merrill Lynch, Pierce, Fenner & Smith Inc.  
Harris Chan

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. Member and Associated Person

The evidentiary hearing was conducted partially by videoconference.

**REPRESENTATION OF PARTIES**

For Claimant J.P. Morgan Securities, LLC (“JPMorgan”): Leonard Weintraub, Esq., Paduano & Weintraub LLP, New York, New York.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Inc. (“Merrill Lynch”): Maria V. Martin, Esq., Rubin, Fortunato & Harbison, P.C., Paoli, Pennsylvania.

For Respondent Harris Chan (“Chan”): Louis M. Lagalante, Esq., Lagalante PLLC, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: November 22, 2019.

Answer to Respondent Chan’s Counterclaim filed on or about: February 18, 2020.

J.P. Morgan Securities, LLC signed the Submission Agreement: November 22, 2019.

Statement of Answer filed by Respondent Merrill Lynch on or about: January 28, 2020.

Merrill Lynch, Pierce, Fenner & Smith Inc. signed the Submission Agreement: January 28, 2020.

Statement of Answer and Counterclaim filed by Respondent Chan on or about: January 28, 2020.

Harris Chan signed the Submission Agreement: February 5, 2020.

## **CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action: breach of contract; misappropriation of trade secrets and confidential information; conversion; breach of fiduciary duty; breach of duty of loyalty; intentional interference with actual and prospective economic advantages; negligent interference with actual and prospective economic advantages; aiding and abetting breach of fiduciary duty/duty of loyalty; inducing breach of contract; tortious interference with contract and common law obligations; and unfair competition.

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

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

In the Counterclaim, Respondent Chan asserted the following causes of action: expungement; abuse of U5 process; breach of industry standards; tortious interference with prospective business relations; unfair competition; abuse of process; and prima facie tort.

Unless specifically admitted in the Statement of Answer to Chan's Counterclaim, Claimant denied the allegations made in the Counterclaim and asserted various affirmative defenses.

## **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested that an award be entered in its favor against Respondents as follows:

(A) A permanent injunction enjoining and restraining Chan, directly or indirectly, and whether alone or in concert with others, including but not limited to any director, officer, agent, employee/or representative of Merrill Lynch, from:

(1) soliciting, attempting to solicit, inducing to leave, or attempting to induce to leave, any JPMorgan client serviced by Chan at JPMorgan or whose name became known to Chan by virtue of his employment with JPMorgan, through the period November 1, 2020; and

(2) using, disclosing, or transmitting for any purpose JPMorgan's documents, materials and/or confidential and proprietary information pertaining to JPMorgan, JPMorgan's employees, an/or JPMorgan's clients.

(B) A permanent injunction enjoining and restraining Respondents, directly or indirectly, and whether alone or in concert with others, from using, disclosing, or transmitting for any purpose any confidential or proprietary information belonging to or concerning JPMorgan (or any affiliates or predecessors in interest), its clients or employees, that was provided to Merrill Lynch by Chan.

(C) Ordering Respondents, and all those acting in concert with them, including but not limited to the directors, officers, employees, and agents of Merrill Lynch, to return to JPMorgan all records, documents and/or information in whatever form (whether original, copied, computerized, electronically stored, or handwritten), pertaining to JPMorgan's (or its affiliates or

predecessors in interest) clients, employees and business in the possession, custody and/or control of Respondents.

(D) compensatory damages in an amount to be proven at the hearing.

(E) punitive and exemplary damages.

(F) attorneys' fees and costs of this proceeding; and

(G) such other and further relief as deemed just and proper.

In the Statement of Answer, Respondent Merrill Lynch requested an award dismissing the Statement of Claim, and each and every claim for relief alleged therein, attorneys' fees, costs, and disbursements in the action; and such other, further, and different relief as deemed just and proper.

In the Statement of Answer and Counterclaim, Respondent Chan requested an award:

(i) denying Claimant's claims, including claims for monetary, injunctive and/or any other legal or equitable relief, be denied, in their entirety, with prejudice.

(ii) on Chan's Counterclaims, an award recommending that statements in the Form U5 be expunged and the following changes to Chan's U5 be made:

- (i) the answer to Question 7(B)1 be change to "No".
- (ii) (ii) all related DRPs be deleted in their entirety; and,
- (iii) (iii) Claimant's statement be deleted from the CRD record.

(iii) awarding compensatory damages in an amount to be determined at the hearing.

(iv) punitive and exemplary damages.

(v) attorneys' fees and costs; and

(vi) such other, different, and further relief as deemed reasonable, appropriate, and equitable under the circumstances.

In the Statement of Answer to Chan's Counterclaim, Claimant requested that Chan's Counterclaim be denied and dismissed, and an award in Claimant's favor be entered on Claimant's claims.

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

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

On December 5, 2019, the parties filed a Stipulated Injunction regarding Claimant's request for injunctive relief. In the Stipulated Injunction, the parties agreed to proceed with this arbitration on a non-expedited basis.

On February 1, 2022, Claimant filed a notice of settlement in principle as to all claims and counterclaims, except for Respondent Chan’s request to have his Form U5 expunged. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim and Counterclaim.

The hearing in this arbitration was held in-person on February 8, 2022. Pursuant to an agreement between the parties and the Panel, the hearing on February 10, 2022, was held virtually via Zoom.

The Award in this matter may be executed in counterpart copies.

**AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel recommends the expungement of all references to Occurrence Number 2054042 from the registration records maintained by the Central Registration Depository (“CRD”) for Harris Chan (CRD Number 6332901). Any “Yes” answers should be changed to “No,” as applicable.

The Panel recommends expungement based on the defamatory nature of the information. The above recommendations are made with the understanding that the registration records are not automatically amended. Harris Chan must forward a copy of this Award to FINRA’s Credentialing, Registration, Education and Disclosure Department for review.

**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 | =\$ 1,700.00 |
| Counterclaim Filing Fee  | =\$ 1,575.00 |

*\*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 parties, Claimant J.P. Morgan Securities, LLC and Respondent Merrill Lynch, Pierce, Fenner & Smith Inc. are each assessed the following:

|                    |              |
|--------------------|--------------|
| Member Surcharge   | =\$ 1,900.00 |
| Member Process Fee | =\$ 3,750.00 |

**Postponement Fees**

Postponements granted during these proceedings for which fees were assessed or waived:

|  |              |
|--|--------------|
| February 7 & 9, 2022, postponement requested by the parties. | =\$ 1,125.00 |
|--|--------------|

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Total Postponement Fees = \$ 1,125.00

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

The Panel has assessed \$562.500 of the postponement fees to Respondent Chan.

**Last-Minute Cancellation Fees**

Fees apply when a hearing on the merits is cancelled within ten calendar days before the start of a scheduled hearing session:

February 7 & 9, 2022, cancellation requested by the parties. = \$ 1,800.00

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Total Last-Minute Cancellation Fees = \$ 1,800.00

The Panel has assessed \$900.00 of the last-minute cancellation fees to Claimant.

The Panel has assessed \$900.00 of the last-minute cancellation fees to Respondent Chan.

**Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court.

J.P. Morgan Securities, LLC is assessed:

Injunctive Relief Surcharge = \$ 2,500.00

**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

Respondent Chan submitted one (1) discovery-related motion

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Total Discovery-Related Motion Fees = \$ 200.00

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 Chan.

**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:

Two (2) pre-hearing sessions with a single Arbitrator @ \$450.00/session = \$ 900.00  
Pre-Hearing Conferences: December 7, 2020 1 session

|  |            |               |
|--|------------|---------------|
| December 14, 2020  | 1 session  |               |
| Three (3) pre-hearing sessions with the Panel @ \$1,125.00/session |            | = \$ 3,375.00 |
| Pre-Hearing Conferences: June 1, 2020                              | 1 session  |               |
| March 30, 2021   | 1 session  |               |
| May 10, 2021   | 1 session  |               |
| Three (3) hearing sessions @ \$1,125.00/session                    |            | = \$ 3,375.00 |
| Hearings: February 8, 2022   | 2 sessions |               |
| February 10, 2022  | 1 session  |               |
| <hr/>  |            |               |
| Total Hearing Session Fees   |            | = \$ 7,650.00 |

The Panel has assessed \$5,512.50 of the hearing session fees to Claimant.

The Panel has assessed \$2,137.50 of the hearing session fees to Respondent Merrill Lynch.

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

**ARBITRATION PANEL**

|                    |   |  |
|--------------------|---|--|
| Susan C Lushing    | - | Public Arbitrator, Presiding Chairperson |
| Blueth Bromfield   | - | Public Arbitrator                        |
| Michael A Pickholz | - | 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**

***Susan C Lushing***

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Susan C Lushing  
Public Arbitrator, Presiding Chairperson

**02/16/2022**

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

***Blueth Bromfield***

\_\_\_\_\_  
Blueth Bromfield  
Public Arbitrator

**02/17/2022**

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

***Michael A Pickholz***

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Michael A Pickholz  
Non-Public Arbitrator

**02/17/2022**

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

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.

February 17, 2022

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