

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
SagePoint Financial, Inc.

Case Number: 19-03592

vs.

Respondent
Leo Rosner

Hearing Site: Cleveland, Ohio

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 SagePoint Financial, Inc. (“Claimant”): Greg Curley, Esq., SagePoint Financial, Inc., Jersey City, New Jersey and Mitch Deane, SagePoint Financial, Inc., Phoenix, Arizona.

For Respondent Leo Rosner (“Respondent”): Mark L. Kowalsky, Esq. and Paige Szymanski, Esq., Jaffe, Raitt, Heuer & Weiss, P.C., Southfield, Michigan.

CASE INFORMATION

Statement of Claim filed on or about: December 5, 2019.

Claimant signed the Submission Agreement: December 4, 2019.

Answer to Counterclaim filed on or about: May 14, 2020.

Statement of Answer filed on or about: February 14, 2020.

Amended Statement of Answer and Counterclaim filed on or about: May 1, 2020.

Respondent signed the Submission Agreement: February 13, 2020.

CASE SUMMARY

In the Statement of Claim, Claimant asserted a cause of action for breach of a promissory note (“Note”). Claimant alleged that the remaining balance of the Note became immediately due and payable upon Respondent’s resignation from employment with Claimant.

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

Respondent asserted the following causes of action: violation of FINRA standards of commercial honor and just and equitable principles of trade, declaration of non-liability for the note, breach of contract, unjust enrichment, unfair competition, and promissory estoppel. The causes of action related to Respondent's allegations that Claimant failed to meet its obligations to him, conspired to take his clients, and interfered with his client relationships.

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

RELIEF REQUESTED

In the Statement of Claim, Claimant requested that the Arbitrator enter an award requiring Respondent to pay the outstanding principal Note balance of \$77,600.00; interest of \$2,589.50 on the Note, accrued as of the date of Respondent's resignation on July 23, 2019; additional interest on the Note, accruing from the date Respondent terminated his affiliation with Claimant; and attorneys' fees and costs, including FINRA forum fees, witness and production fees, filing fees, member surcharges, hearing fees, and other related costs, as provided in the Note. Claimant further requested such other and further relief as the Arbitrator deems equitable, just, and proper.

In the Amended Statement of Answer and Counterclaim, Respondent requested an award denying Claimant's claim in its entirety, compensatory damages and punitive and/or exemplary damages, costs and attorneys' fees, and other relief as the Arbitrator deems appropriate.

In the Answer to Counterclaim, Claimant requested that the Counterclaim be denied in its entirety and that Claimant be granted the relief requested in the Statement of Claim.

At the hearing, Claimant requested \$64,312.45 in compensatory damages, interest, and that all forum fees be assessed to Respondent. Respondent requested \$295,439.36 in compensatory damages, \$50,000.00 in attorneys' fees, and that all forum fees be assessed to Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

On May 1, 2020, the parties filed a stipulated motion to allow Respondent to file an Amended Answer and Counterclaim and to proceed with a single arbitrator ("Stipulated Motion"). In an Order dated May 5, 2020, the Arbitrator granted the Stipulated Motion.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and any post-hearing submissions, the Arbitrator 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 \$64,312.12 in compensatory damages.

2. Respondent is liable for and shall pay to Claimant interest on the above-stated sum at the rate of 2% per annum from 30 days after the Award date through and including the date the award is paid in full.
3. Claimant is liable for and shall pay to Respondent the sum of \$25,000.00 in compensatory damages.
4. Respondent's award in the total amount of \$25,000.00 is an offset to Claimant's award in the total amount of \$64,312.12. As such, Respondent is liable for and shall pay to Claimant the amount of \$64,312.12 minus \$25,000.00 awarded to Respondent, for a net amount due to Claimant of \$39,312.12.
5. 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	=\$ 1,750.00
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 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	=\$ 1,100.00
Member Process Fee	=\$ 3,750.00

Postponement Fees

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

July 15, 2021, postponement requested by the parties	=\$ 450.00
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Total Postponement Fees	=\$ 450.00
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The Arbitrator has assessed \$225.00 of the postponement fees to Claimant.

The Arbitrator has assessed \$225.00 of the postponement fees to Respondent.

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:

July 15, 2021, cancellation requested by the parties	= \$	600.00
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Total Last-Minute Cancellation Fees	= \$	600.00

The Arbitrator has assessed \$300.00 of the last-minute cancellation fees to Claimant.

The Arbitrator has assessed \$300.00 of the last-minute cancellation fees to Respondent.

Hearing Session Fees and Assessments

The Arbitrator has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Arbitrator, including a pre-hearing conference with the Arbitrator, which lasts four (4) hours or less. Fees associated with these proceedings are:

Four (4) pre-hearing sessions @ \$450.00/session	= \$	1,800.00
Pre-Hearing Conferences:		
April 3, 2020	1 session	
October 6, 2020	1 session	
January 29, 2021	1 session	
June 1, 2021	1 session	
Ten (10) hearing sessions @ \$450.00/session	= \$	4,500.00
Hearings:		
July 13, 2021	2 sessions	
July 14, 2021	1 session	
August 25, 2021	2 sessions	
August 26, 2021	2 sessions	
August 27, 2021	2 sessions	
September 2, 2021	1 session	
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Total Hearing Session Fees	= \$	6,300.00

The Arbitrator has assessed \$3,150.00 of the hearing session fees to Claimant.

The Arbitrator has assessed \$3,150.00 of the hearing session fees to Respondent.

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

ARBITRATOR

Robert J. Scafuri

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Sole 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.

Arbitrator's Signature

Robert J. Scafuri

Robert J. Scafuri
Sole Public Arbitrator

10/04/2021

Signature Date

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October 04, 2021

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