

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Frank Fabiano Miceli

Case Number: 19-03771

vs.

Respondents
Elevation, LLC
Christopher Jacob Matthaei

Hearing Site: Jersey City, New Jersey

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 Person

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Frank Fabiano Miceli: William F. Dahill, Esq., Dunnington, Bartholow & Miller LLP, New York, New York.

For Respondents Elevation, LLC, and Christopher Jacob Matthaei: James V. Garvey, Esq., Vedder Price P.C., Chicago, Illinois.

CASE INFORMATION

Statement of Claim filed on or about: December 20, 2019.

Frank Fabiano Miceli signed the Submission Agreement: December 20, 2019.

Joint Statement of Answer filed by Respondents on or about: February 25, 2020.

Elevation, LLC signed the Submission Agreement: February 20, 2020.

Christopher Jacob Matthaei signed the Submission Agreement: February 21, 2020.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: breach of contract-unpaid profits; fraudulent misrepresentation; fraudulent concealment; breach of contract-unpaid commissions; breach of contract-unpaid distributions; breach of contract-equity repurchase; breach of implied covenant of good faith and fair dealing; fraudulent inducement; unjust enrichment; accounting; breach of fiduciary duty; and breach of implied contract.

Unless specifically admitted in the Joint Statement of Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: compensatory damages in the minimum amount of \$1,423,811.00 for \$51,000.00 in unpaid commissions, \$497,811.00 in unpaid profits, and \$875,000.00 in equity redemption; unspecified damages for unpaid distributions, unjust enrichment, monies owed to Claimant through an accounting, fraudulent misrepresentation, fraudulent concealment, breach of implied covenant of good faith and fair dealing, breach of fiduciary duty, and breach of implied contract; punitive damages; costs, expenses, and attorneys' fees; pre-judgment and post-judgment interest; arbitration fees; and such other and further relief as deemed just and proper.

In the Joint Statement of Answer, Respondents requested entry of an award in their favor and against Claimant; assessment of all forum and other fees exclusively against Claimant; attorneys' fees; and for such other relief as deemed appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

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

On March 8, 2021, Respondents filed a Motion to Submit Additional Evidence. On March 10, 2021, Claimant filed on Opposition to Respondents' Motion to Submit Additional Evidence. By Order dated March 23, 2021, the Panel denied the Motion to Submit Additional Evidence.

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. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages and attorneys' fees, 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 =\$ 2,000.00

**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 that employed the associated person at the time of the event giving rise to the dispute. Accordingly, as a party, Respondent Elevation, LLC is assessed the following:

Member Surcharge	= \$ 3,025.00
Member Process Fee	= \$ 6,175.00

Late Pre-Hearing Cancellation Fees

Fees apply when a pre-hearing conference is cancelled within three business days of the scheduled conference:

July 28, 2020, cancellation requested by Claimant	= \$ 100.00
December 8, 2020, cancellation requested by the parties	= \$ 100.00

Total Late Pre-Hearing Cancellation Fees	= \$ 200.00
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The Panel has assessed \$100.00 of the late pre-hearing cancellation fees to Claimant.

The Panel has assessed \$100.00 of the late pre-hearing cancellation fees, jointly and severally, to Respondents.

Postponement Fees

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

November 10-13, 2020, postponement requested by the parties.	= \$ 1,400.00
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Total Postponement Fees	= \$ 1,400.00
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The Panel has assessed \$700.00 of the postponement fees to Claimant.

The Panel has assessed \$700.00 of the postponement 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 Arbitrators, including a pre-hearing conference with the Arbitrators, 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: August 18, 2020	1 session

Two (2) pre-hearing sessions with the Panel @ \$1,400.00/session	= \$ 2,800.00
Pre-Hearing Conferences: April 27, 2020	1 session
November 17, 2020	1 session

Seven (7) hearing sessions @ \$1,400.00/session	= \$ 9,800.00
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Hearings:	March 2, 2021	2 sessions
	March 3, 2021	2 sessions
	March 4, 2021	2 sessions
	March 5, 2021	1 session

Total Hearing Session Fees	= \$ 13,050.00
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The Panel has assessed \$6,525.00 of the hearing session fees to Claimant.

The Panel has assessed \$6,525.00 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

Edith M. Novack	-	Public Arbitrator, Presiding Chairperson
Eric Nelson	-	Public Arbitrator
Leo J. Karwejna	-	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

Edith M. Novack

Edith M. Novack
Public Arbitrator, Presiding Chairperson

03/09/2021

Signature Date

Eric Nelson

Eric Nelson
Public Arbitrator

03/08/2021

Signature Date

Leo J. Karwejna

Leo J. Karwejna
Non-Public Arbitrator

03/08/2021

Signature Date

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March 23, 2021

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