

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Hancock Whitney Investment Services, Inc.

Case Number: 20-00218

vs.

Respondent
Julian Paul Bourgeois

Hearing Site: New Orleans, Louisiana

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 Hancock Whitney Investment Services, Inc. (“Claimant” or “Hancock Whitney”): Jennifer L. Anderson, Esq. and Christine M. White, Esq., Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Baton Rouge, Louisiana.

For Respondent Julian Paul Bourgeois (“Respondent” or “Bourgeois”): Mark L. Barbre, Esq., Jamie Hurst Watts, Esq., and Joseph Weston Clark, Esq., Long Law Firm, Baton Rouge, Louisiana.

CASE INFORMATION

Statement of Claim for Injunctive and Other Relief filed on or about: February 7, 2020.
Claimant’s Answer and Affirmative Defenses to Respondent’s Counterclaims: March 31, 2020.
Claimant signed the Submission Agreement: February 7, 2020.

Statement of Answer and Counterclaim filed by Respondent on or about: March 16, 2020.
Respondent signed the Submission Agreement: March 16, 2020.

CASE SUMMARY

In the Statement of Claim for Injunctive and Other Relief, Claimant asserted the following causes of action: breach of contract; breach of duty of loyalty; violation of Defend Trade Secrets Act (“DTSA”), 18 U.S.C. § 1836, et seq.; violation of Louisiana Uniform Trade Secrets Act (“LUTSA”), La. R.S. 51:1431, et seq.; and injunctive relief. The causes of action relate to

Respondent's alleged violation of the Employee Confidentiality and Non-Solicitation Agreement dated December 3, 2012 ("Agreement") and the request for a permanent injunction.

In the Statement of Answer and Counterclaim, Respondent denied the allegations made in the Statement of Claim for Injunctive and Other Relief, asserted various affirmative defenses, and asserted the following causes of action: failure to pay commissions under Louisiana Revised State 12:631 et seq; and wrongfully sought and obtained temporary restraining order ("TRO"). The causes of action relate to the alleged unenforceability of the Agreement and improper TRO.

In Claimant's Answer and Affirmative Defenses to Respondent's Counterclaims, Claimant denied the allegations made in Respondent's Statement of Answer and Counterclaim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim for Injunctive and Other Relief, Claimant requested:

1. The entry of a permanent injunction;
2. Damages, including, but not limited to, actual losses and lost profits;
3. Damages for unjust enrichment;
4. Exemplary damages;
5. Attorneys' fees;
6. Costs;
7. Interest;
8. A finding that Respondent violated the Agreement, specifically the non-solicitation, and non-disparagement provisions;
9. A finding that Respondent violated his fiduciary duties of fidelity and loyalty owed to Claimant;
10. A finding that Respondent violated the DTSA and LUTSA by misappropriating Claimant's trade secrets;
11. Respondent be further restrained, enjoined, and prohibited from engaging in further activities in breach of his Agreement and obligations; and
12. Any other legal or equitable relief deemed fair and just.

In the Statement of Answer and Counterclaim, Respondent requested:

1. Dismissal of all claims asserted in Claimant's Statement of Claim with prejudice;
2. An order for Claimant to pay the amount of the commissions due to Respondent for the months of November and December of 2019;
3. A penalty of ninety days' wages at Respondent's daily rate of pay;
4. Attorneys' fees;
5. Interest from the date the Counterclaim is asserted until paid;
6. Damages sustained as a result of the improperly issued TRO;
7. Attorneys' fees sustained as a result of the improperly issued TRO; and
8. For all other equitable relief appropriate in the premises.

In Claimant's Answer and Affirmative Defenses to Respondent's Counterclaims, Claimant requested:

1. Denial of Respondent's Counterclaims;
2. Denial of Respondent's request for relief;
3. Attorneys' fees;

4. Costs; and
5. All other sums to which Claimant is entitled and as appropriate under the circumstances.

OTHER ISSUES CONSIDERED AND DECIDED

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

On February 19 and 21, 2020, the Panel held a hearing on Claimant's request for permanent injunctive relief. On February 24, 2020, the Panel issued an Order which included the following:

1. JULIAN PAUL BOURGEOIS and all persons or entities acting in concert with him are restrained, enjoined and prohibited from, directly or indirectly, acting alone or with others, soliciting or attempting to solicit, inducing to leave or diverting or attempting to induce to leave or divert from doing business with Hancock Whitney Investment Services, Inc. (hereinafter "Hancock Whitney"), any customer for whom he had responsibility (defined herein as the customer having been assigned to Bourgeois as one of his accounts, either individually or in a shared capacity with any other Hancock Whitney employee) with Hancock Whitney, which prohibition shall remain in effect through December 11, 2021.
2. For the purposes of the injunction against solicitation in Paragraph 1, Julian Paul Bourgeois and all persons or entities acting in concert with him are restrained, enjoined, and prohibited from divulging, revealing, discussing, publishing, disseminating, or communicating confidential customer data, customer and prospect names and contact information, financial portfolios, financial account information, financial needs, investment preferences, established business relationships, and other Confidential Information as defined in the Employee Confidentiality and Non-Solicitation Agreement dated December 3, 2012.
3. For the purposes of the injunction against solicitation in Paragraph 1, Julian Paul Bourgeois and all persons or entities acting in concert with him are restrained, enjoined, and prohibited from using or permitting use of, for his/their benefit or the benefit of third parties, confidential customer data and prospect names and contact information, financial portfolios, financial account information, financial needs, investment preferences, established business relationships, and other Confidential Information as defined in the Agreement.
4. HANCOCK WHITNEY and all persons or entities acting in concert with Hancock Whitney are ordered to provide timely and complete answers to any customers' inquiries about Julian Paul Bourgeois including his current contact information and that the inquiring customers have the right to retain their assets at Hancock Whitney or transfer the assets to another firm.

On December 7, 8, 9, and 29, 2020, the Panel held an evidentiary hearing on the parties' claims for damages.

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. Respondent is liable for and shall pay to Claimant the sum of \$32,500.00 in compensatory damages. Claimant is liable for and shall pay to Respondent the sum of \$37,867.00 in compensatory damages. As such, Claimant is liable for and shall pay to Respondent \$37,867.00 minus \$32,500.00, for a net amount due to Respondent of \$5,367.00. Respondent's obligations are extinguished by the offset.
2. Claimant is liable for and shall pay to Respondent interest on \$5,367.00 at the rate of 5.75% per annum from the date of this Award through payment in full.
3. Respondent is liable for and shall pay to Claimant the sum of \$45,000.00 in attorneys' fees and costs pursuant to the Agreement. Claimant is liable for and shall pay to Respondent the sum of \$15,000.00 in attorneys' fees and costs pursuant to the Louisiana Revised Statute 23:631 and 23:632. As such, Respondent is liable for and shall pay to Claimant \$45,000.00 minus \$15,000.00, for a net amount due to Claimant of \$30,000.00. Claimant's obligations are extinguished by the offset.
4. Any and all claims for relief not specifically addressed herein 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	= \$ 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 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	= \$ 1,900.00
Member Process Fee	= \$ 3,750.00

Accordingly, as Respondent's current firm, LPL Financial LLC 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:

June 16, 2020, cancellation requested by Parties	= \$	100.00
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Total Last-Minute Cancellation Fees	= \$	100.00

The Panel has assessed \$50.00 of the late pre-hearing cancellation fees to Claimant.

The Panel has assessed \$50.00 of the late pre-hearing cancellation fees to Respondent.

Injunctive Relief Fees

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

1. Claimant is assessed:

Injunctive Relief Surcharge	= \$	2,500.00
Arbitrator travel expenses and costs	= \$	654.93

2. Respondent is assessed:

Arbitrator travel expenses and costs	= \$	654.93
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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: May 14, 2020	1 session	

Four (4) pre-hearing sessions with the Panel @ \$1,125.00/session	= \$	4,500.00
Pre-hearing Conferences: March 9, 2020	1 session	
May 19, 2020	1 session	
September 15, 2020	1 session	
December 3, 2020	1 session	

Eleven (11) hearing sessions @ \$1,125.00/session	= \$	12,375.00
Hearing Dates: February 19, 2020	2 sessions	
February 21, 2020	2 sessions	
December 7, 2020	2 sessions	
December 8, 2020	2 sessions	
December 9, 2020	1 session	
December 29, 2020	2 sessions	

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Total Hearing Session Fees	= \$	17,325.00

The Panel has assessed \$8,662.50 of the hearing session fees to Claimant.

The Panel has assessed \$8,662.50 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Mark A. Myers	-	Public Arbitrator, Presiding Chairperson
James E. Bolin, Jr.	-	Public Arbitrator
Eric M. Schorr	-	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

Mark A. Myers

Mark A. Myers
Public Arbitrator, Presiding Chairperson

01/26/2021

Signature Date

James E. Bolin, Jr.

James E. Bolin, Jr.
Public Arbitrator

01/26/2021

Signature Date

Eric M. Schorr

Eric M. Schorr
Non-Public Arbitrator

01/25/2021

Signature Date

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January 27, 2021

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