

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

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In the Matter of the Arbitration Between:

Claimant  
Austin Park

Case Number: 20-00598

vs.

Respondent  
Unionbanc Investment Services, LLC

Hearing Site: Los Angeles, California

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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: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant Austin Park (“Claimant”): Patrick R. Mahoney, Esq., The Law Offices of Patrick R. Mahoney, P.C., Beverly Hills, California.

For Respondent Unionbanc Investment Services, LLC (“Respondent”): Kevin Fitzgerald, Esq., Jones, Bell, Abbott, Fleming & Fitzgerald L.L.P., Los Angeles, California.

**CASE INFORMATION**

Statement of Claim filed on or about: February 19, 2020.  
Amended Statement of Claim filed on or about: December 28, 2020.  
Answer to Counterclaim filed on or about: March 15, 2021.  
Claimant signed the Submission Agreement: February 19, 2020.

Statement of Answer filed by Respondent on or about: April 10, 2020.  
Answer to Amended Statement of Claim filed on or about: February 22, 2021.  
Counterclaim filed by Respondent on or about: February 8, 2021.  
Respondent signed the Submission Agreement: April 13, 2020.

**CASE SUMMARY**

In the Statement of Claim, as amended, Claimant asserted the following causes of action: wrongful conduct; intentional and negligent interference with prospective economic relations; defamation, including defamation per se; false light and public disclosure of private acts; breach of written and oral contract and breach of the covenant of good faith and fair dealing; failure to pay wages in violation of California Labor Code §202; waiting time penalties pursuant to

California Labor Code §203; interest pursuant to California Labor Code §98.1; attorneys' fees pursuant to California Labor Code §218.5; wrongful discharge; and failure to supervise and control. In addition, Claimant asserted a claim alleging Claimant's Form U5 filed by Respondent, as part of registration records maintained by the Central Registration Depository ("CRD"), are false and defamatory in nature.

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

In the Counterclaim, Respondent asserted the following causes of action: intentional interference with contractual relations; intentional interference with prospective economic relations; and negligent interference with prospective economic relations.

In the Answer to Counterclaim, Claimant denied the allegations made in the Counterclaim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, as amended, Claimant requested:

1. Compensatory damages in an amount according to proof, but less than \$693,000.00;
2. Attorneys' fees and costs;
3. Pre and post-judgment interest at the legal rate;
4. Punitive damages in an amount according to proof; and
5. A directive from the Panel to FINRA CRD instructing it to amend Claimant's Form U5 to expunge all references to the termination disclosure made by Respondent.

In the Statement of Answer, as amended, Respondent requested:

1. Claimant's claims be denied in their entirety;
2. An award be entered in favor of Respondent;
3. Claimant be required to pay all costs and fees, including attorneys' fees, incurred in these proceedings; and
4. Such other and further relief as the Panel deems appropriate.

In the Counterclaim, Respondent requested:

1. Claimant be ordered to pay Respondent in an amount to be proven at the hearing; and
2. Such other and further relief as the panel deems appropriate.

In the Answer to Counterclaim, Claimant reasserted judgment and damages against Respondent as set forth in the Amended Statement of Claim and requested:

1. Exemplary damages, including punitive damages;
2. Attorneys' fees;
3. Costs; and
4. Other sanctions that the Panel deems just and proper, and according to proof to which Claimant is entitled under California Code of Civil Procedure §128.5.

At the hearing, Claimant withdrew his claim for wrongful discharge.

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

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

On December 28, 2020, Claimant filed a motion to amend the Statement of Claim. Respondent did not object. By order dated February 2, 2021, the Chairperson granted Claimant's unopposed motion to amend the Statement of Claim.

On February 12, 2021, Respondent filed an unopposed Motion for Leave to File Counterclaims. By order dated February 12, 2021, the Chairperson granted Respondent's unopposed motion.

On March 16, 2021, Claimant filed a Motion to Compel Respondent's Compliance with the Chairman's Second Discovery Order and Third-Party Discovery and requested a hearing with the Panel to consider available discovery sanctions under FINRA Rule 13511. On March 26, 2021, Respondent filed its opposition to the motion. On March 30, 2021, Claimant filed his reply to Respondent's opposition to the motion. On April 15, 2021, the Panel heard oral arguments on the motion and request for sanctions. By order dated April 19, 2021, the Panel granted the motion and ordered Respondent to pay Claimant \$35,000.00 in attorneys' fees as sanction.

On June 3, 2021, Respondent filed a notice of voluntary dismissal with prejudice of its Counterclaim. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Counterclaim.

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. Austin Park's (CRD Number 2907242) request for expungement of his Form U5 is denied.
3. 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 | = \$ | 1,725.00 |
| Counterclaim Filing Fee  | = \$ | 1,700.00 |

*\*The filing fee is made up of a non-refundable and a refundable portion.*

Pursuant to Armendariz v. Foundation Health Psychcare Services, Inc., 24 Cal. 4<sup>th</sup> 83 (2000), Claimant is assessed a \$200.00 initial claim filing fee. The balance of the non-refundable portion of the filing fee, in the amount of \$225.00, is assessed to Respondent.

### **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, Respondent is assessed the following:

|                    |      |          |
|--------------------|------|----------|
| Member Surcharge   | = \$ | 2,475.00 |
| Member Process Fee | = \$ | 5,075.00 |

### **Postponement Fees**

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

|   |      |        |
|---|------|--------|
| October 4-8, 2021, postponement requested by Claimant   | = \$ | Waived |
| December 6-10, 2021, postponement requested by Claimant | = \$ | Waived |

### **Discovery-Related Motion Fees**

Fees apply for each decision rendered on a discovery-related motion.

|  |      |        |
|--|------|--------|
| Three (3) decisions on discovery-related motions on the papers with one (1) Arbitrator @ \$200.00/decision | = \$ | 600.00 |
|--|------|--------|

|   |      |        |
|---|------|--------|
| One (1) decision on a discovery-related motion on the papers with the Panel @ \$400.00/decision | = \$ | 400.00 |
|---|------|--------|

Claimant submitted two (2) discovery-related motions  
Respondent submitted two (2) discovery-related motions

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|                                     |      |          |
|-------------------------------------|------|----------|
| Total Discovery-Related Motion Fees | = \$ | 1,000.00 |
|-------------------------------------|------|----------|

Pursuant to Armendariz v. Foundation Health Psychcare Services, Inc., 24 Cal. 4<sup>th</sup> 83 (2000), the Panel has assessed the total discovery-related motion fees to Respondent.

### **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:

|  |           |        |
|--|-----------|--------|
| Two (2) pre-hearing sessions with a single Arbitrator @ \$450.00/session | = \$      | 900.00 |
| Pre-Hearing Conferences: June 1, 2020                                    | 1 session |        |
| January 26, 2021   | 1 session |        |

|  |           |          |
|--|-----------|----------|
| Two (2) pre-hearing sessions with the Panel @ \$1,300.00/session | = \$      | 2,600.00 |
| Pre-Hearing Conferences: April 15, 2021                          | 1 session |          |



**ARBITRATION PANEL**

|                      |   |  |
|----------------------|---|--|
| George Herman Frisch | - | Public Arbitrator, Presiding Chairperson |
| Ronald Grzywinski    | - | Public Arbitrator                        |
| Jean Chung           | - | 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**

***George Herman Frisch***

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George Herman Frisch  
Public Arbitrator, Presiding Chairperson

***01/12/2022***

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

***Ronald Grzywinski***

\_\_\_\_\_  
Ronald Grzywinski  
Public Arbitrator

***01/13/2022***

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

***Jean Chung***

\_\_\_\_\_  
Jean Chung  
Non-Public Arbitrator

***01/12/2022***

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

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January 14, 2022

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