

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

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In the Matter of the Arbitration Between:

Claimants

Daniel Gerard Sebastian  
Robin R. Sebastian

Case Number: 20-01135

vs.

Respondent

Wells Fargo Clearing 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: Customer and Associated Person vs. Member

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimants Daniel Gerard Sebastian (“Daniel Sebastian”), and Robin R. Sebastian (“Robin Sebastian”): Robert C. Rosen, Esq., John B. Wallace, Esq. and Sharan S. Ramchandani, Esq., Rosen & Associates, P.C., Los Angeles, California.

Hereinafter, Daniel Sebastian and Robin Sebastian are collectively referred to as “Claimants”.

For Respondent Wells Fargo Clearing Services, LLC (“Respondent”): Kevin K. Fitzgerald, Esq. and Neil M. Katsuyama, Esq., Jones Bell Abbott Fleming & Fitzgerald, Los Angeles, California.

**CASE INFORMATION**

Statement of Claim filed on or about: April 6, 2020.

Claimants signed the Submission Agreement: March 16, 2020.

Statement of Answer filed by Respondent on or about: June 22, 2020.

Respondent signed the Submission Agreement: June 19, 2020.

**CASE SUMMARY**

In the Statement of Claim, Claimants asserted the following causes of action: unpaid compensation; California Labor Code violations; breach of written contract; promissory estoppel; detrimental reliance; unjust enrichment; services rendered and unpaid; violation of the implied covenant; wrongful termination; fraud; defamation; and misrepresentation. The causes of action relate to the termination of Daniel Sebastian's employment with Respondent and his allegation that the Form U5 filed by Respondent, as part of registration records maintained by the Central Registration Depository ("CRD"), is defamatory in nature. The causes of action also relate to Respondent allegedly placing an administrative hold on a securities account co-owned by Claimants.

In the Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested:

1. All contract damages, including:
  - a. Unpaid Second Performance Bonus;
  - b. Other unpaid compensation;
  - c. Damages arising from the promissory note; and
  - d. Any prorated compensation owed by Respondent due to its wrongful termination of Daniel Sebastian;
2. All remedies based on the California Labor Code ("Cal. Lab. Code"), including:
  - a. Waiting time penalties based on Cal. Lab. Code § 203;
  - b. Double damages based on Cal. Lab. Code § 972;
  - c. Prejudgment interest based on Cal. Lab. Code § 218.6; and
  - d. Attorneys' fees based on Cal. Lab. Code § 218.5;
3. General, special, incidental, consequential, and compensatory damages on all claims, including:
  - a. Loss and/or reduction of compensation, income, employment opportunities, career benefits, commissions, reputation and good will;
  - b. Lost value of time and expense spent in developing Daniel Sebastian's securities career;
  - c. The loss of Daniel Sebastian's book of business;
  - d. Mental, emotional and physical distress damages;
  - e. Job search expenses; and
  - f. Damages based on California Civil Code § 3300, et seq;
4. Punitive and exemplary damages based on California Civil Code § 3294;
5. Attorneys' fees;
6. All equitable remedies and relief, including expungement of Respondent's filings from Daniel Sebastian's Form U5, and Occurrence Numbers 2038618, 2038619, and 2039519 from Daniel Sebastian's CRD records;
7. Declaratory and injunctive relief, including:
  - a. Respondent's unilateral condition, that Daniel Sebastian's Second Performance Bonus was subject to Respondent's "compliance review", was invalid;
  - b. Respondent improperly failed to pay Daniel Sebastian's Second Performance Bonus;
  - c. Respondent willfully failed to pay Daniel Sebastian's Second Performance Bonus;
  - d. Respondent made false statements to FINRA about Daniel Sebastian;

- e. Daniel Sebastian's employment with Respondent was not at-will but he could only be fired for cause because his book of business constituted "other consideration";
  - f. Respondent illegally fired Daniel Sebastian, and/or Respondent lacked good cause for firing Daniel Sebastian;
  - g. Daniel Sebastian's contract with Respondent is described in Respondent's job offer;
  - h. Respondent breached its contract with Daniel Sebastian;
  - i. Provisions in the promissory note and offer letter are unconscionable;
  - j. Respondent did not comply with the terms of the offer letter and/or promissory note;
  - k. When Daniel Sebastian joined Respondent, Daniel Sebastian did not lose all rights to the book of business he developed;
  - l. Respondent was negligent in covering Daniel Sebastian's desk while Daniel Sebastian was on medical leave;
  - m. Respondent assured Daniel Sebastian that he would be paid a Second Performance Bonus;
  - n. Daniel Sebastian did not fail to disclose any matter to a customer which he was required to disclose;
  - o. Respondent fired Daniel Sebastian in retaliation for insisting on his Second Performance Bonus and Respondent's Location Promise;
  - p. Respondent improperly accelerated the promissory note's due date;
  - q. Respondent improperly increased the interest rate by 3% on the promissory note;
  - r. Daniel Sebastian has continuing rights in the client which he developed before his employment with Respondent, such as the right to share in the income from the book of business;
  - s. Onerous and unconscionable provisions in the various contracts drafted by Respondent are unenforceable, including provisions in any loan documents after Respondent fired Daniel Sebastian;
  - t. Respondent's restrictions (or freeze) on Claimants' accounts were unlawful and excessive;
  - u. Respondent falsely promised Daniel Sebastian a specific work location;
  - v. Daniel Sebastian's mitigation does not offset his damages because his customer base was scalable in that new customers at Respondent could have been obtained at his prior employment; and as to work subsequent to Respondent, those customers also could have been obtained had Respondent not fired him; and
  - w. Daniel Sebastian had no duty to mitigate damages as to his rights and duties, as to Respondent's offer letter, as to his employment with Respondent, as to Respondent's loan, and as to Respondent's demands for immediate and complete repayment;
8. Reforming all contracts and documents consistent with the relief requested in this Statement of Claim, including:
- a. Changing all references that Daniel Sebastian's employment was "at-will;" and
  - b. Changing Respondent's claimed right to accelerate the loan after firing Daniel Sebastian;
9. All available remedies based on California Government Code § 12926, including:
- a. Reinstatement;
  - b. Backpay;
  - c. Reimbursement;
  - d. Out-of-pocket expenses; and/or
  - e. Expunging CRD records;

10. Treble damages under California Civil Code § 3345.
11. Prejudgment interest on all sums due from the first date on which each amount became due at the maximum legal rate;
12. Dismissal with prejudice of and/or denial of any affirmative claims for relief by Respondent; and
13. Such other and further relief as the Panel deems just and proper.

In the Statement of Answer, Respondent requested:

1. Dismissal of Daniel Sebastian's claims;
2. All forum fees be assessed against Daniel Sebastian; and
3. Costs.

At the hearing, Claimants requested relief in the amount of \$6,848,484.00 broken down as follows:

1. Compensatory damages in the amount of \$1,562,121.00;
2. Emotional distress damages in the amount of \$200,000.00;
3. Reputation damages in the amount of \$400,000.00; and
4. Punitive damages in the amount of \$4,686,363.00.

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

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

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. Claimants' claims are denied in their entirety.
2. Daniel Sebastian's request for expungement of an underlying customer complaint, Occurrence Number 2039519, and for expungement of his Form U5, Occurrence Numbers 2038618, 2038619, from his registration records maintained by the CRD is denied.
3. 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 ("Code"), the following fees are assessed:

#### **Filing Fees**

FINRA Dispute Resolution Services assessed a filing fee\* for each claim:

Initial Filing Fee	=\$ 1,575.00
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*\*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), Respondent is assessed a \$200.00 filing fee. The balance of the non-refundable portion of the filing fee, in the amount of \$175.00, 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	= \$	1,900.00
Member Process Fee	= \$	3,750.00

### **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
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Claimants submitted one (1) discovery-related motion

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Total Discovery-Related Motion Fees	= \$	200.00
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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 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 the Panel @ \$1,125.00/session		
Pre-Hearing Conference: August 21, 2020	1 session	= \$ 1,125.00

Eighteen (18) hearing sessions @ \$1,125.00/session		= \$ 20,250.00
Hearings:		
	July 12, 2021	2 sessions
	July 13, 2021	2 sessions
	July 14, 2021	2 sessions
	July 15, 2021	2 sessions
	July 16, 2021	2 sessions
	July 19, 2021	2 sessions
	July 20, 2021	2 sessions
	July 21, 2021	2 sessions
	July 22, 2021	2 sessions

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Total Hearing Session Fees	= \$	21,375.00
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Pursuant to Armendariz v. Foundation Health Psychcare Services, Inc., 24 Cal. 4<sup>th</sup> 83 (2000), the Panel has assessed the total hearing session fees to Respondent.

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

**ARBITRATION PANEL**

Adam Michael Porter	-	Public Arbitrator, Presiding Chairperson
Pamela Jane Koslow	-	Public Arbitrator
Stephen Howard Marcus	-	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**

***Adam Michael Porter***

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Adam Michael Porter  
Public Arbitrator, Presiding Chairperson

**08/04/2021**

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Signature Date

***Pamela Jane Koslow***

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Pamela Jane Koslow  
Public Arbitrator

**08/04/2021**

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

***Stephen Howard Marcus***

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Stephen Howard Marcus  
Public Arbitrator

**08/03/2021**

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

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August 04, 2021

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