

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
LPL Financial LLC

Case Number: 20-01237

vs.

Respondent
John Shannon Agostino

Hearing Site: New York, New York

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 LPL Financial LLC (“LPL”): Andrew R. Park, Esq., Park Sensenig LLC, Richmond, Virginia.

Respondent John Shannon Agostino (“Agostino”) appeared pro se.

CASE INFORMATION

Statement of Claim filed on or about: April 16, 2020.

Statement of Answer to the Counterclaim filed on or about: July 16, 2020.

LPL signed the Submission Agreement: April 16, 2020.

Statement of Answer and Counterclaim filed by Respondent on or about: June 26, 2020.

Agostino signed the Submission Agreement: July 6, 2020.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: breach of promissory note agreements.

Unless specifically admitted in the Statement of Answer and Counterclaim, Respondent denied the allegations made in the Statement of Claim, asserted various affirmative defenses, and asserted the following causes of action: wrongful termination; breach of contract; retaliation; fraudulent and

negligent misrepresentation; breach of covenant of good faith and fair dealing; and punitive damages.

Unless specifically admitted in the Statement of Answer to the Counterclaim, Claimant denied the allegations made in the Counterclaim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested the total principal balance due under the promissory notes at termination in the amount of \$400,876.71; accrued and accruing interest on the balances due under the promissory notes to be determined at hearing; all costs of collection including attorneys' fees as agreed to under the terms of the promissory notes to be determined at hearing; post-award interest; and any and all further relief that the Panel deems just and proper.

In the Statement of Answer and Counterclaim, Respondent requested that the Panel enter final judgment in his favor on LPL's Statement of Claim; order that LPL take nothing by its claim; award damages for back pay, front pay, lost employment benefits, and lost earning capacity; award compensatory damages to be determined at the hearing; award consequential damages to be determined at the hearing; award punitive damages to be determined at the hearing; order the expungement of LPL's termination disclosure contained in his Form U5 based on the defamatory and false nature of the information; and award reasonable attorney's fees together with all expenses and costs of this arbitration.

In the Statement of Answer to the Counterclaim, Claimant requested that the Counterclaim be denied in its entirety and renewed its initial request for relief, as set forth in detail in its Statement of Claim, for an award against Agostino comprised of all of the following: compensatory damages in the amount of \$400,876.71 representing the total principal balance due at termination pursuant to Agostino's promissory notes; accrued and accruing interest on the balances due on Agostino's promissory notes; all costs of collection including all attorney's fees incurred in this arbitration (as provided for by the terms of Agostino's promissory notes); post-award interest; and any other relief that the Panel deems just and proper.

At the hearing, Claimant requested compensatory damages in the amount of \$389,348.74; interest in the amount of \$66,862.21; post-award interest at the rate of 9.69%; attorneys' fees in the amount of \$142,388.40; costs and expenses of in the amount of \$4,970.95; and assessment of all FINRA hearing session fees against Respondent.

OTHER ISSUES CONSIDERED AND DECIDED

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

On April 12, 2021, Claimant filed a Motion to Compel Discovery pursuant to Rule 13509 of the Code of Arbitration Procedure ("Code"), to which no response was filed. By Order dated April 25, 2021, the Chairperson granted Claimant's Motion to Compel and ordered Respondent provide discovery responses and produce all responsive documents within 14 days of the issuance of the Order.

On May 18, 2021, Claimant filed a Second Motion to Compel Discovery, to which no response was filed. By Order dated June 15, 2021, the Chairperson granted Claimant's Second Motion to Compel and ordered Respondent to comply with the Order within 7 days of the issuance of the Order, or by close of business on June 22, 2021. In the Order, the Chairperson stated that "pursuant to FINRA Rule 13511(b) and 13212(c), failure to comply with this Order could result in sanctions including, but not limited to, dismissal of all claims and defenses by party John Shannon Agostino, with prejudice."

On June 25, 2021, Claimant filed a Motion to Dismiss the Counterclaims and Defenses Asserted by Respondent John Shannon Agostino pursuant to Rule 13511 of the Code of Arbitration Procedure ("Code"), to which no response was filed. On August 12, 2021, the Panel heard oral arguments on Claimant's Motion to Dismiss the Counterclaims and Defenses. Respondent did not appear for oral arguments on the Motion. On August 13, 2021, the Panel granted Claimant's Motion to Dismiss the Counterclaims and Defenses on the grounds that Respondent failed to comply with the Panel's discovery orders dated April 25, 2021 and June 15, 2021.

Respondent John Shannon Agostino did not appear at the evidentiary hearing. Upon review of the file, the Panel determined that Respondent John Shannon Agostino received due notice of the hearing and that arbitration of the matter would proceed without Respondent John Shannon Agostino present, in accordance with the Code.

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. Respondent is liable for and shall pay to Claimant the sum of \$389,348.74 in compensatory damages.
2. Respondent is liable for and shall pay to Claimant interest in the amount of \$66,862.21 pursuant to the promissory notes, which has accrued on the outstanding balances beginning January 21, 2020 and running through October 20, 2021.
3. Respondent is liable for and shall pay to Claimant interest on the above-stated sums at the rate of 9.69% per annum from the date of the Award through and including the date of payment of the Award.
4. Respondent is liable for and shall pay to Claimant the sum of \$106,791.30 in attorneys' fees pursuant to the terms of the Promissory Notes.
5. Respondent is liable for and shall pay to Claimant the sum of \$945.95 in costs.
6. Respondent is liable for and shall reimburse Claimant \$1,000.00 to reimburse Claimant for the non-refundable portion of Claimant's filing fee.
7. Respondent's Counterclaim is dismissed with prejudice.

8. 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	= \$	2,125.00
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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent 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:

December 4, 2020, cancellation requested by the parties	= \$	100.00
---	------	--------

Total Late Pre-Hearing 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.

Postponement Fees

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

October 18-19, 2021, postponement requested by Claimant	= \$	1,125.00
---	------	----------

Total Postponement Fees	= \$	1,125.00
-------------------------	------	----------

The Panel has assessed the total postponement fees to Claimant.

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:

October 18-19, 2021, postponement requested by Claimant	= \$	1,800.00
---	------	----------

Total Last-Minute Cancellation Fees	= \$	1,800.00
-------------------------------------	------	----------

The Panel has assessed the total last-minute cancellation fees to Claimant.

Discovery-Related Motion Fees

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

Two (2) decisions on discovery-related motions on the papers with one (1) Arbitrator @ \$200.00/decision = \$ 400.00

Claimant submitted two (2) discovery-related motions

Total Discovery-Related Motion Fees = \$ 400.00

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:

Three (3) pre-hearing sessions with the Panel @ \$x1,125.00/session = \$ 3,375.00
Pre-Hearing Conferences: August 31, 2020 1 session
April 26, 2021 1 session
August 12, 2021 1 session

One (1) hearing session @ \$1,125.00/session = \$ 1,125.00
Hearing: October 20, 2021 1 session

Total Hearing Session Fees = \$ 4,500.00

The Panel has assessed \$1,125.00 of the hearing session fees to Claimant.

The Panel has assessed \$3,375.00 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

James M. Rhodes	-	Public Arbitrator, Presiding Chairperson
David I. Goldblatt	-	Public Arbitrator
Anthony J. Cetta	-	Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

Concurring Arbitrators' Signatures

James M. Rhodes

James M. Rhodes
Public Arbitrator, Presiding Chairperson

11/15/2021

Signature Date

David I. Goldblatt

David I. Goldblatt
Public Arbitrator

11/13/2021

Signature Date

Anthony J. Cetta

Anthony J. Cetta
Non-Public Arbitrator

11/16/2021

Signature Date

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.

November 16, 2021

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