

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

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In the Matter of the Arbitration Between:

Claimant  
FSC Securities Corporation

Case Number: 20-02256

vs.

Respondent  
John Eugene Marty

Hearing Site: San Francisco, 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: Member vs. Associated Person  
Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant FSC Securities Corporation (“Claimant”): Garry T. Stevens, Jr., Esq., Winget, Spadafora & Schwartzberg, LLP, New York, New York.

Respondent John Eugene Marty (“Respondent”) appeared pro se.

**CASE INFORMATION**

Statement of Claim filed on or about: July 17, 2020.  
Answer to Counterclaim filed on or about: December 9, 2020.  
Claimant signed the Submission Agreement: July 16, 2020.

Statement of Answer filed by Respondent on or about: November 5, 2020.  
Counterclaim filed by Respondent on or about: November 5, 2020.  
Respondent did not sign the Submission Agreement.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted a claim for breach of a promissory note executed by Respondent dated April 27, 2016 (“Note”). Claimant asserted that the remaining balance of the Note became due upon the termination of Respondent’s employment with Claimant.

In the Statement of Answer, Respondent denied the allegations made in the Statement of Claim.

In the Counterclaim, Respondent asserted the following causes of action: deceptive recruiting practices; lack of due diligence, bait-and-switch recruiting; conflicts with contract; damage of reputation; and wrongful termination.

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, Claimant requested:

1. The outstanding Note principal of \$64,297.00;
2. Interest on the Note accruing at a fixed rate of 6.25%, compounded annually;
3. Attorneys' fees and costs, including FINRA forum fees, witness and production fees, filing fees, member surcharges, hearing fees and other related costs, as provided in the Note; and
4. Such other and further relief as the Panel deems equitable, just and proper.

In the Statement of Answer, Respondent did not set forth a specific relief request.

In the Counterclaim, Respondent requested \$200,000.00 in compensatory damages.

In the Answer to Counterclaim, Claimant requested:

1. The Panel enter an award for the relief requested in the Statement of Claim;
2. Denial of the Counterclaim in its entirety;
3. All fees and expenses, including attorneys' fees and FINRA fees; and
4. Such other and further relief as the Panel deems appropriate.

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

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

Respondent did not file a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and, having answered the claim, appeared, and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

On April 5, 2021, Claimant filed a Motion to Dismiss Respondent's Counterclaim pursuant to Rule 13504 of the Code, or in the alternative, for Sanctions pursuant to Rules 13511(a) and 13212(a). No responses were received. On April 26, 2021, the Panel heard oral arguments on the Motion to Dismiss. On April 27, 2021, per Rule 13212, the Panel granted the Motion to Dismiss the Counterclaims of Respondent. The Panel further ordered Respondent to pay Claimant attorneys' fees incurred in relation to the preparation of the Motion to Dismiss, and that Claimant shall file a Declaration regarding the reasonable attorneys' fees incurred within five days of receipt of the Order. On April 29, 2021, Claimant submitted a Declaration of attorneys' fees in response to the Panel's Motion to Dismiss Order.

### **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. Respondent is liable for and shall pay to Claimant the sum of \$87,124.48 in compensatory damages.
2. Respondent is liable for and shall pay to Claimant interest on the above-stated sum at the rate of 6.25%, compounded annually from February 28, 2017 through and including the date the Award is served.
3. Respondent's Counterclaim is dismissed pursuant to the Panel's Order dated April 27, 2021.
4. Any and all claims for relief not specifically addressed herein are denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial Claim Filing Fee	= \$	1,750.00
Counterclaim Filing Fee	= \$	1,425.00

*\*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	= \$	1,100.00
Member Process Fee	= \$	3,250.00

#### **Postponement Fees**

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

June 7, 8 and 10, 2021, postponement requested by parties	=	WAIVED
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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 Pre-Hearing Conference: November 3, 2020                      1 session	= \$	450.00
Two (2) pre-hearing sessions with the Panel @ \$1,125.00/session Pre-Hearing Conferences: January 22, 2021                      1 session	= \$	2,250.00

	April 26, 2021	1 session		
One (1) hearing session @ \$1,125.00/session			= \$	1,125.00
Hearing:	June 9, 2021	1 session		
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Total Hearing Session Fees			= \$	3,825.00

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**

Mary Margaret Bush	-	Public Arbitrator, Presiding Chairperson
D. Peter Gleichenhau	-	Public Arbitrator
Elmo E. Wedderburn	-	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**

***Mary Margaret Bush***

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Mary Margaret Bush  
Public Arbitrator, Presiding Chairperson

**06/23/2021**

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Signature Date

***D. Peter Gleichenhau***

\_\_\_\_\_  
D. Peter Gleichenhau  
Public Arbitrator

**06/23/2021**

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

***Elmo E. Wedderburn***

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Elmo E. Wedderburn  
Non-Public Arbitrator

**06/23/2021**

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

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June 24, 2021

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