

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Private Capital Management, LLC
Carnes Capital Corporation
Private Capital Management Holdings L.P.

Case Number: 20-02583

vs.

Respondent

John Petsel Folz II

Hearing Site: Boca Raton, Florida

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 and Non-Members vs. Associated Person

This case was decided by a majority-public panel.

REPRESENTATION OF PARTIES

For Claimants Private Capital Management, LLC (“PCM”), Carnes Capital Corporation (“Carnes”) and Private Capital Management Holdings L.P. (“PCM Holdings”): Victor Bayata, Esq., Vernon Litigation Group, Naples, Florida.

For Respondent John Petsel Folz II: Casey K. Weidenmiller, Esq., Woods, Weidenmiller, Michetti & Rudnick, LLP, Naples, Florida.

CASE INFORMATION

Statement of Claim filed on or about: August 11, 2020.
PCM signed the Submission Agreement: August 13, 2020.
Carnes signed the Submission Agreement: August 13, 2020.
PCM Holdings signed the Submission Agreement: August 13, 2020.

Redacted Statement of Answer filed by Respondent on or about: November 9, 2020.
Unredacted Statement of Answer filed by Respondent on or about: December 18, 2020.
John Petsel Folz II signed the Submission Agreement: November 9, 2020.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: breach of contract; breach of duty of loyalty; breach of trade secrets; negligence; gross negligence; misrepresentation; tortious interference with business relations; appropriation of business

opportunities; failure to adhere to post-employment agreements; and violations of the conduct rules of the Financial Industry Regulatory Authority (“FINRA”), as well as other pertinent laws and regulations. The causes of action relate to Claimants’ assertion that the basis of this claim was the breach of Respondent’s agreements he executed while employed by Claimants, the attempt to steal Claimants’ wealthy clients and related accounts, the ongoing defamation by Respondent, the tortious interference with business relations, the alleged trade secrets and confidential business information violations by Respondent after his employment with Claimants ended in May of 2020, and Respondent’s breach of his duty of good faith and loyalty as an employee of PCM and Carnes and as a partner of PCM Holdings (both during and following the term of his employment with Claimants).

Unless specifically admitted 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 all the damages to which Claimants are legally or equitably entitled, along with their costs and attorneys’ fees, as well as a significant award of punitive damages due to Respondent continuing to engage in this type of improper behavior in the future (especially considering the length of time left on Respondent’s contractual obligations).

In the Statement of Answer, Respondent requested the entry of an Award in his favor, and against Claimants, as to each and every one of their claims, together with an award of costs and reasonable attorneys’ fees to Respondent, and all such other and further relief as the Panel deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

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

On or about November 16, 2020, Respondent filed a Motion to Dismiss pursuant to Rule 13504 of the Code of Arbitration Procedure (“Code”). On or about January 11, 2021, Claimants filed a preliminary response to the Motion to Dismiss. On or about June 6, 2021, Claimants filed a response opposing the Motion to Dismiss. On June 7, 2021, the Panel heard oral arguments on the Motion to Dismiss. The Panel granted Respondent’s Motion to Dismiss pursuant to Rule 13504 without prejudice on the following grounds:

Given both the parties’ Amended and Restated Limited Partnership Agreement of PCM Holdings (“Partnership Agreement”) and the Confidentiality and Non-Solicitation Agreement (“Confidentiality Agreement”) specifically provided for a full address and disposition of this case by the American Arbitration Association (“AAA”) whereas FINRA was not referenced as an alternative dispute resolution option in the Partnership Agreement, it would be inefficient to “piecemeal” these claims in separate forums when they arise out of similar facts and circumstances. As such, this matter should be dismissed without prejudice in its entirety to allow AAA to hear all of Claimants’ claims without further delay.

On or about June 6, 2021, PCM Holdings filed a withdrawal of its claims asserted in the Statement of Claim without prejudice. On or about June 8, 2021, Respondent opposed the dismissal without prejudice. The Panel deemed PCM Holdings' withdrawal moot in light of the Panel's dismissal without prejudice of PCM Holdings' claims.

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. Claimants' claims as stated in the Statement of Claim are dismissed in their entirety without prejudice pursuant to Rule 13504 of the Code.
2. 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, 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

**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 Carnes is assessed the following:

Member Surcharge = \$ 1,900.00

Member Process Fee = \$ 3,750.00

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:

Three (3) pre-hearing sessions with the Panel @ \$1,125.00/session = \$ 3,375.00

Pre-Hearing Conferences: December 7, 2020 1 session

March 11, 2021 1 session

June 7, 2021 1 session

Total Hearing Session Fees = \$ 3,375.00

The Panel has assessed \$1,687.50 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$1,687.50 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Erika Deutsch Rotbart	-	Public Arbitrator, Presiding Chairperson
Nofrey Matthew Fornaro, III	-	Public Arbitrator
Montie J. Labadie	-	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

Erika Deutsch Rotbart

Erika Deutsch Rotbart
Public Arbitrator, Presiding Chairperson

06/10/2021

Signature Date

Nofrey Matthew Fornaro, III

Nofrey Matthew Fornaro, III
Public Arbitrator

06/11/2021

Signature Date

Montie J Labadie

Montie J. Labadie
Non-Public Arbitrator

06/10/2021

Signature Date

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June 11, 2021

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