

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Jayne W. Di Vincenzo

Case Number: 20-03366

vs.

Respondent
Devin Garofalo
Colonial River Wealth Management, LLC

Hearing Site: Norfolk, Virginia

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. Associated Person and Non-Member

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Jayne W. Di Vincenzo: Janet K. DeCosta, Esq., and Harry I. Willett, III, Esq., Janet K. DeCosta P.C., Washington, District of Columbia.

For Respondent Devin Garofalo (“Garofalo”): William R. Baldwin, III, Esq., Meyer, Baldwin, Long & Moore, LLP, Richmond, Virginia.

Colonial River Wealth Management, LLC did not enter an appearance.

CASE INFORMATION

Statement of Claim filed on or about: September 25, 2020.

Amended Statement of Claim filed on or about: December 8, 2020.

Second Amended Statement of Claim filed on or about: March 29, 2021.

Statement of Answer to Counterclaim filed on or about: May 19, 2021.

Jayne W. Di Vincenzo signed the Submission Agreement: September 23, 2020.

Statement of Answer filed by Respondent Devin Garofalo on or about: December 1, 2020.

Statement of Answer to Amended Statement of Claim filed on or about: December 31, 2020.

Statement of Answer to Second Amended Statement of Claim filed on or about: April 20, 2021.

Counterclaim filed on or about: April 20, 2021.

Devin Garofalo signed the Submission Agreement: November 20, 2020.

Colonial River Wealth Management, LLC did not file a Statement of Answer or sign the Submission Agreement.

CASE SUMMARY

In the Second Amended Statement of Claim, Claimant asserted the following causes of action: declaratory relief; breach of contract; breach of covenant of good faith and fair dealing; disparagement and defamation; fraud and misrepresentation; and tortious interference with business expectancy.

Unless specifically admitted in the Statement of Answer to the Second Amended Statement of Claim, Respondent Devin Garofalo denied the allegations made in the Second Amended Statement of Claim.

In the Counterclaim, Respondent Devin Garofalo asserted the following causes of action: tortious interference; defamation; fraud; misrepresentation; breach of contract; and injunctive and declaratory relief.

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

RELIEF REQUESTED

In the Second Amended Statement of Claim, Claimant requested:

1. Declaratory judgment declaring:
 - a. the terms and conditions set forth in Article IX(A) are contrary to FINRA Regulatory Notice 19-10 and thus are unenforceable;
 - b. the terms and conditions set forth in Article IX(A)(2)(ii) are contrary to FINRA Regulatory Notice 19-10 and thus are unenforceable;
 - c. the terms and conditions set forth in Article IX(A)(2)(v) are contrary to FINRA Regulatory Notice 19-10 and thus are unenforceable;
 - d. the terms and conditions set forth in Article IX(A) are contrary to, and if enforced, would cause Claimant to violate FINRA Rule 2140, and thus are unenforceable;
 - e. the terms and conditions set forth in Article IX(A)(2)(ii) are contrary to, and if enforced, would cause Claimant to violate FINRA Rule 2140, and thus are unenforceable;
 - f. the terms and conditions set forth in Article IX(A)(2)(v) are contrary to, and if enforced, would cause Claimant to violate FINRA Rule 2140, and thus are unenforceable;
 - g. the terms and conditions set forth in Article IX(A) are contrary to public policy and thus are unenforceable;
 - h. the terms and conditions set forth in Article IX(A)(2)(ii) are contrary to public policy and thus are unenforceable;
 - i. as an Associated Person of a Member firm of FINRA, Claimant is required to comply with FINRA's rules and regulations, precluding her from impeding a customer's access to his/her broker or financial advisor of choice;
 - j. enforcement of Articles IX(A) and (A)(2)(ii) and (v), individually and severally, would impermissibly deny customers access to their broker or financial advisor of choice;
 - k. Claimant complied with FINRA rules and regulations;
 - l. after Claimant terminated her relationship with the Respondents, she was free to

- accept LBFA Clients who reached out to her and requested that she serve as their broker and financial advisor;
- m. Claimant has no monetary or other liability to Garofalo, individually, or in his capacity as Member, Manager, and CEO of CRWM I, and/or to CRWM I;
 - n. Claimant has no monetary or other liability to the Respondents and/or any entity under which Garofalo conducted or conducts a business;
 - o. Garofalo must comply with the terms and conditions set forth in Articles III(C)(3) and (4); and
 - p. Garofalo has breached Articles VIII(A)(1) and Article IX(J) of the Agreement.
2. Unspecified compensatory damages arising from Respondents' breach of contract; breach of the covenant of good faith and fair dealing; defamation; fraud and misrepresentation; and tortious interference with business expectancy.
 3. Appropriate declaratory judgment.
 4. Not less than \$100,000.00 in compensatory damages.
 5. Such other relief, including but not limited to an award of attorney's fees and costs pursuant to Article X(G) of the Asset Purchase Agreement ("APA"), as the Panel may deem just and proper under the circumstances.

In the Statement of Answer to the Second Amended Statement of Claim, Respondent Devin Garofalo requested that the Second Amended Statement of Claim be denied.

In the Counterclaim, Respondent Devin Garofalo requested:

1. Temporary Injunctive Relief:
 - a. enjoining Claimant from further predation of the client accounts, relationships and business she sold under the February 18, 2020 Asset Purchase Agreement;
 - b. accounting for all sums received since April 1, 2020 on account of any client accounts, relationships or other assets transferred to Respondent Garofalo and/or Colonial River Wealth Management under the February 18, 2020 Asset Purchase Agreement that involve matters subject to the jurisdiction of this Tribunal;
 - c. accounting for all sums received from Cambridge or Cambridge Advisors (regardless of how or whether characterized as an advance, loan of any kind, management fee, expense reimbursement or otherwise) and as promised by contract or otherwise before and during the pendency of this arbitration;
 - d. sequestering all sums received (and the proceeds thereof) since April 1, 2020 on account of any client accounts and relationships transferred to Mr. Garofalo and/or Colonial River Wealth Management under the February 18, 2020 Asset Purchase Agreement that involve assets subject to the jurisdiction of this Tribunal; this sequestration to dissolve automatically upon the entry of a final award in this arbitration;
 - e. enjoining any action to collect any sums potentially payable by Respondent Garofalo to Claimant under the Asset Purchase Agreement, to include any security or collateral interests or guaranties provided by him to secure performances under the APA that would have been due to Claimant but for her tortious conduct and breaches of contract set out herein, the temporary relief to dissolve automatically upon the entry of a final award in this arbitration;

- f. return of all Redtail software and data to Respondent Garofalo; and
 - g. such other temporary relief as is proper.
2. Final Award granting permanent relief equitable as to all temporary relief sought against Claimant.
3. Final Award of Compensatory Damages:
 - a. the sum of not less than \$12,515,700.00 against Claimant for her breaches of the APA as to the accounts of the clients taken and/or accepted by her in violation of the restrictive covenants of the APA and as will be demonstrated at trial, her repeated and continuous tortious interference with the contract rights and expectancies of Respondent Garofalo with respect thereto, her fraud in the inducement of the contract with Respondent Garofalo, the inducement of the execution of the APA and the inducement of the performance of the APA;
 - b. the sum of \$12,515,700.00 includes the \$250,000.00 due as a result of Claimant's breach of the provisions of the APA relating to the sale of her insurance income assets to Respondent Garofalo as well as compensatory damages due for her tortious conduct against Respondent Garofalo, her tortious interference with Respondent Garofalo's contracts and business expectancies;
 - c. the sum includes \$11,823.25 due from Claimant for her failure to reimburse the compensation expenses owed by Claimant for K.F.;
 - d. the sum includes \$500,000.00 for presumed damages for instances of defamation of Respondent Garofalo by Claimant as pleaded and the additional sum of \$150,000.00 for additional instances of defamation as will be demonstrated at trial;
 - e. the sum includes \$546,860.00 for compensatory damages to Respondent Garofalo due as a result of Claimant's misconduct as to Respondent Garofalo respecting R. B., J. C., K. D., B. G., R. C., W. C., S. L., B. W., and J. W., such amounts being awarded separately but included within the compensatory damages of \$12,515,700.00 sought herein;
 - f. the total sum of \$13,177,523.25 as compensatory damages, inclusive of all of the matters set out in the above sub-paragraphs 3 a-f.
4. Final Award of Punitive Damages:
 - a. Punitive damages of \$350,000.00 against Claimant, the maximum permitted under Virginia law, for her willful, reckless, conscious and malicious misconduct herein alleged, in addition to compensatory damages set out above.
5. Reasonable attorneys' fees and expenses of litigation against Claimant for her breach of the APA and her fraud against Respondent Garofalo, to be determined by the Panel as a part of the overall Final Award herein.
6. Pre-Judgment Interest to accrue on the sum of \$12,515,700.00, with interest to commence on the date determined by the Panel per Va. Code § 8.01- 382, such date requested to be not later than December 1, 2020, with rate of interest to be 6% per annum in accordance with Va. Code § 6.2-301.A.
7. Declaratory relief under Article 17, Title 8.01, Va. Code as follows: That Devin Garofalo has no liability to Jayne W. Di Vincenzo either under the Asset Purchase Agreement dated February 18, 2020 or otherwise under any cause of action of any kind in law or

equity, accrued in whole or in part, existing in any way as of the date of the filing of this Statement of Claim and that under Va. Code § 8.01-186, this Tribunal retain jurisdiction to award such further relief as may at any time be proper.

In the Statement of Answer to the Counterclaim, Claimant requested that the Panel:

1. deny all relief requested in the Counterclaim;
2. grant the relief requested in the Second Amended Statement of Claim;
3. grant an award of attorneys' fees and costs pursuant to Article X(G) of the Asset Purchase Agreement, in Claimant's favor; and/or in the alternative, if the Panel agrees to arbitrate the claims of the Colonial Entities and Garofalo, individually and in his Corporate Positions:
4. deny all such claims;
5. grant Claimant the relief requested in the Second Amended Statement of Claim by entering an award, against Respondent Garofalo, individually and in his corporate positions, jointly and severally with the Colonial entities;
6. grant an award of attorney's fees and costs pursuant to Article X(G) of the Asset Purchase Agreement, in Claimant's favor, against Respondent Garofalo, individually and in his corporate positions, jointly and severally with the Colonial Entities; and
7. grant such other relief as the Panel may deem just and proper under the circumstances.

OTHER ISSUES CONSIDERED AND DECIDED

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

Respondent Colonial River Wealth Management, LLC is not a member or associated person of FINRA and did not voluntarily submit to arbitration. Therefore, the Panel made no determination with respect to the claims against Respondent Colonial River Wealth Management, LLC.

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 Devin Garofalo is liable for and shall pay to Claimant the sum of \$591,238.00 in compensatory damages for Respondent Devin Garofalo's default of the APA.
2. Respondent Devin Garofalo is liable for and shall pay to Claimant interest on the above-stated sum at the current legal rate from the date of the Award until the Award is paid.
3. Respondent Devin Garofalo is liable for and shall pay to Claimant the sum of \$957,400.00 in compensatory damages for Respondent Devin Garofalo's failure to remit commissions.
4. Respondent Devin Garofalo is liable for and shall pay to Claimant interest on the above-stated sum at the current legal rate from the date of the Award until the Award is paid.
5. Respondent Devin Garofalo is liable for and shall pay to Claimant the sum of \$490,639.00 in attorneys' fees pursuant to the Asset Purchase Agreement, Article X(G).

6. Respondent Devin Garofalo is liable for and shall pay to Claimant the sum of \$32,995.00 for expert witness fees, reimbursement of FINRA filing fee, and legal research costs.
7. Respondent Devin Garofalo's Counterclaims are denied in their entirety.
8. Any and all claims for relief not specifically addressed herein, including any requests for injunctive relief, declaratory relief, and punitive damages, 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	=\$ 1,425.00
Counterclaim Filing Fee	=\$ 2,250.00
Inj. Relief Expedited Processing Fee	=\$ 2,500.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, as Respondent Garofalo's firm, LPL Financial LLC is assessed the following:

Member Surcharge	=\$ 1,700.00
Member Process Fee	=\$ 7,000.00

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:

One (1) pre-hearing session with a single Arbitrator @ \$450.00/session	=\$ 450.00
Pre-Hearing Conference: August 6, 2021 1 session	

Four (4) pre-hearing sessions with the Panel @ \$1,500.00/session	=\$ 6,000.00
Pre-Hearing Conference: March 3, 2021 1 session	
March 23, 2021 1 session	
July 22, 2021 1 session	
November 5, 2021 1 session	

Fourteen (14) hearing sessions @ \$1,500.00/session	=\$ 21,000.00
Hearings: December 6, 2021 2 sessions	
December 7, 2021 2 sessions	
December 8, 2021 2 sessions	
December 9, 2021 2 sessions	
December 10, 2021 2 sessions	

December 13, 2021	3 sessions
December 14, 2021	1 session

Total Hearing Session Fees	= \$ 27,450.00
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The Panel has assessed \$1,500.00 of the hearing session fees to Claimant.

The Panel has assessed \$25,950.00 of the hearing session fees to Respondent Devin Garofalo.

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

ARBITRATION PANEL

JoAnne Lewis Nolte	-	Public Arbitrator, Presiding Chairperson
Janice L. Burnham	-	Public Arbitrator
Michael Andrew Glasser	-	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

JoAnne Lewis Nolte

JoAnne Lewis Nolte
Public Arbitrator, Presiding Chairperson

03/01/2022

Signature Date

Janice L. Burnham

Janice L. Burnham
Public Arbitrator

03/01/2022

Signature Date

Michael Andrew Glasser

Michael Andrew Glasser
Non-Public Arbitrator

03/01/2022

Signature Date

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March 03, 2022

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