

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Eric Wenzel

Case Number: 20-03668

vs.

Respondent
Cantor Fitzgerald & Co.

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: Associated Person vs. Member

This matter was decided by an all-public panel pursuant to Rule 13802 of the Code of Arbitration Procedure (“Code”).

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Eric Wenzel: Howard Schragin, Esq., Sapir Schragin LLP, White Plains, New York.

For Respondent Cantor Fitzgerald & Co.: Nirav S. Shah, Esq., and Samantha Springer, Esq., Cantor Fitzgerald & Co., New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: October 28, 2020.

Amended Statement of Claim filed on or about: November 11, 2020.

Eric Wenzel signed the Submission Agreement: October 19, 2020.

Statement of Answer to the Amended Statement of Claim filed by Respondent on or about: January 14, 2021.

Cantor Fitzgerald & Co. signed the Submission Agreement: January 5, 2021.

CASE SUMMARY

In the Amended Statement of Claim, Claimant asserted the following causes of action: interference with rights under the Family and Medical Leave Act (“FMLA”); retaliation in violation of the FMLA; discrimination based upon Claimant’s gender in violation of Title VII of the Civil

Rights Act (“Title VII”); discrimination based upon Claimant’s gender in violation of the New York State Human Rights Law (“NYSHRL”); discrimination based upon Claimant’s familial status in violation of the NYSHRL; discrimination based upon Claimant’s marital status in violation of the NYSHRL; discrimination based upon Claimant’s gender in violation of the New York City Human Rights Law (“NYCHRL”); discrimination based upon Claimant’s marital status in violation of the NYCHRL; and discrimination based upon Claimant’s caregiver status in violation of the NYCHRL.

Unless specifically admitted in the Statement of Answer to the Amended Statement of Claim, Respondent denied the allegations made in the Amended Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Amended Statement of Claim, Claimant requested that: Respondent’s conduct be declared a violation of Claimant’s rights under the FMLA; declaration that Respondent’s discriminatory conduct to be a violation of Claimant’s rights under Title VII, the NYSHRL, and NYCHRL; reinstatement of Claimant to his prior position with Respondent with all the seniority and terms and conditions and benefits as if he had been employed continuously had his employment not been unlawfully terminated; damages for all compensation, benefits, and lost opportunities of employment that he would have been entitled to receive had Respondent not unlawfully terminated his employment, including but not limited to back pay, lost benefits, lost bonus, stock, equity and/ or partnership units, or the value thereof, front pay, and pre-judgement and post-judgement interest on all sums awarded; compensatory damages for emotional distress, pain and suffering, and mental anguish; liquidated and punitive damages; attorney’s fees and costs in this action; and such other relief as deemed just and proper.

In the Statement of Answer to the Amended Statement of Claim, Respondent requested that the Panel dismiss the Amended Statement of Claim in its entirety and enter an award in favor of Respondent on all claims.

At the conclusion of the hearing, Claimant requested \$2,998,274.00 in compensatory and other damages, and requested attorneys’ fees of \$250,000.00.

OTHER ISSUES CONSIDERED AND DECIDED

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

On January 14, 2022, Claimant filed a Motion to proceed with a Virtual Hearing. On January 14, 2022, Respondent filed a response opposing Claimant’s motion and requested that the hearing proceed in-person. By Order dated January 24, 2022, the Panel granted Claimant’s Motion to proceed with a Virtual Hearing.

The Panel has provided an explanation of the decision in this award. The explanation is for the information of the parties only and is not precedential in nature.

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. Claimant's statutory claims pursuant to the Family Medical Leave Act are denied in their entirety.
2. Claimant's statutory claims pursuant to Title VII of the Civil Rights Act are denied in their entirety.
3. Claimant's statutory claims pursuant to the New York State Human Rights Law are denied in their entirety.
4. Claimant's statutory claims pursuant to the New York City Human Right Law are denied in their entirety.
5. Claimant's non-statutory claims are denied in their entirety.
6. Any and all claims for relief not specifically addressed herein, including any requests for declaratory relief, specific performance, liquidated and punitive damages, and attorneys' fees, are denied.

ARBITRATORS' EXPLANATION OF DECISION

Claimant's claims are denied in their entirety. Assuming that Claimant presented a prima facie case of retaliation (which the Panel believes is a very close question), Respondent presented valid business reasons for its decision to terminate Claimant's employment, i.e., that deteriorating market conditions dictated a reduction in the number of traders employed on the equities derivatives trading desk where Claimant worked, and that the manager who made the termination decision had formed the opinion that among the traders then employed on the desk, Claimant was the one least likely to succeed in contributing to Respondent's new business model for profitability for the trading desk. Claimant failed to demonstrate that those stated reasons were not Respondent's true reasons for the termination decision. As to the claim that Respondent's leave policy was applied in a discriminatory manner, the evidence is clear that Claimant received, and was paid for, all the leave he requested in connection with his caring for a new-born child.

FEES

Pursuant to the Code of Arbitration Procedure ("Code"), the following fees are assessed:

Filing Fees

Claimant Eric Wenzel is assessed a \$200 filing fee in accordance with Rule 13802 of the Code. The balance of the non-refundable portion of the filing fee, in the amount of \$175.00, is assessed to Respondent Cantor Fitzgerald & Co.

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 event giving rise to the dispute. Accordingly, as a party, Cantor Fitzgerald & Co. is assessed the following:

Member Surcharge	= \$	1,900.00
Member Process Fee	= \$	3,750.00

Postponement Fees

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

November 15-19, and 22, 2021, postponement requested by the parties	= \$	1,125.00
February 28, 2022, postponement requested by Claimant		waived

Total Postponement Fees	= \$	1,125.00
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The Panel has assessed \$562.50 of the postponement fees to Claimant.

The Panel has assessed \$562.50 of the postponement 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:

Two (2) pre-hearing sessions with the Panel @ \$1,125.00/session	= \$	2,250.00
Pre-Hearing Conferences: March 9, 2021	1 session	
October 4, 2021	1 session	

Seven (7) hearing sessions @ \$1,125.00/session	= \$	7,875.00
Hearings: February 7, 2022	2 sessions	
February 8, 2022	1 session	
February 9, 2022	2 sessions	
February 10, 2022	1 session	
February 11, 2022	1 session	

Total Hearing Session Fees	= \$	10,125.00
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The Panel has assessed the total hearing session fees to Cantor Fitzgerald & Co. in accordance with Rule 13802 of the Code.

ARBITRATION PANEL

James G Paulsen	-	Public Arbitrator, Presiding Chairperson
Howard J. Stiefel	-	Public Arbitrator
Elliot Schnapp	-	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 G Paulsen

James G Paulsen
Public Arbitrator, Presiding Chairperson

03/01/2022

Signature Date

Howard J. Stiefel

Howard J. Stiefel
Public Arbitrator

03/01/2022

Signature Date

Elliot Schnapp

Elliot Schnapp
Public Arbitrator

02/25/2022

Signature Date

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March 03, 2022

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