

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

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In the Matter of the Arbitration Between:

Claimant  
Intrepid Financial Partners, LLC

Case Number: 20-03878

vs.

Respondent  
Antonio C. Fernandez

Hearing Site: Houston, Texas

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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: Non-Member vs. Associated Person

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimant Intrepid Financial Partners, LLC (“Claimant”): John Siegal, Esq. and Tiffany A. Miao, Esq., Baker & Hostetler LLP, New York, New York.

For Respondent Antonio C. Fernandez (“Respondent”): Daniel A. Schnapp, Esq., Nixon Peabody LLP, New York, New York and Tina B. Solis, Esq. and Christina E. Kurow, Esq., Nixon Peabody LLP, Chicago, Illinois.

**CASE INFORMATION**

Statement of Claim filed on or about: November 24, 2020.  
Claimant signed the Submission Agreement: November 24, 2020.

Statement of Answer filed on or about: January 4, 2021.  
Respondent signed the Submission Agreement: December 4, 2020.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action: breach of contract and breach of fiduciary duty. The causes of action related to Claimant’s allegations that, after Respondent gave notice of his intent to resign from his position as a senior executive, a news release announced that he and a member of his team would join one of Claimant’s direct competitors and that Respondent’s conduct violated his post-employment covenants and obligations under a Non-Competition and Confidentiality Agreement (“Agreement”), dated July 24, 2018.

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, Claimant requested:

1. A permanent injunction, in accordance with the Agreement, that enjoins Respondent from:
  - A. Directly or indirectly using, disclosing, or permitting to be known Claimant's Confidential Information<sup>1</sup>;
  - B. Directly or indirectly removing from Claimant's premises, or make any copies of, Confidential Information;
  - C. Directly or indirectly, whether as an owner, partner, executive, director, consultant, contractor, advisor, agent, or employee, guarantor, surety or otherwise, or through any person, consulting with or in any way aiding or assisting any person to engage in or attempt to engage in any employment, consulting, or other activity which directly or indirectly competes with the current business of Claimant or business under development by Claimant, for the period commencing December 1, 2020 through June 1, 2021;
  - D. Directly or indirectly, on behalf of any party or person other than Claimant, soliciting or inducing (or assisting or providing information in connection herewith) any then-customer of Claimant or prospective customer of Claimant to provide any product, service, or business that is competitive with or substantially similar to any product, service, or business then offered or planned to be offered by Claimant, or to induce such then-customer or prospective customer to reduce or diminish the volume or level of their business with Claimant, for the period commencing December 1, 2020 through June 1, 2021; and
  - E. Directly or indirectly, on behalf of any party or person other than Claimant, soliciting or inducing (or assisting or providing information in connection therewith) any current employee, or person who was an employee or officer of Claimant within the period commencing June 1, 2020 through November 30, 2020 to leave the employ of Claimant, for the period commencing December 1, 2020 through June 1, 2021.
2. Actual, incidental, compensatory, and consequential damages;
3. Punitive or exemplary damages due to Respondent's willful, egregious, and malicious conduct;
4. Costs and expenses incurred, including reasonable attorneys' fees and interest; and
5. Such further relief as the Panel deems necessary, just, and equitable.

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<sup>1</sup> In the Agreement, Confidential Information is defined as "all non-public information of and about [Claimant], including, without limitation, business activities, business plans, strategies, legal affairs, organizational and personnel matters, existing and potential customers, customer information, contracts and agreements with customers, strategies, pending and proposed acquisitions, intellectual property, trade secrets, operational and hiring matters, personnel policies, market studies and forecasts, competitive analysis, regardless of the form in which such information is stored."

In the Statement of Answer, Respondent requested that the Statement of Claim be dismissed in its entirety, an award of attorneys' fees and costs incurred in defending this matter; and that the Panel grant such other and further relief as it deems just and proper.

After the injunctive hearing, Claimant withdrew its claims for actual, incidental, compensatory, consequential, and punitive or exemplary damages and, in an Application for an Award of Reimbursement of Its Reasonable Attorneys' Fees and Costs, requested \$800,882.96 in attorneys' fees and \$19,116.26 in costs.

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

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

On November 30, 2020, Claimant filed an Order to Show Cause Granting Temporary Restraining Order and Motion for Expedited Discovery ("TRO"), dated the same day and issued by the United States District Court for the Southern District of New York.

The Panel conducted the December 15, 2020 injunctive hearing by telephone and the December 22, 23, and 28, 2020 injunctive hearings by videoconference.

On December 30, 2020, the parties filed a Memorandum Opinion and Order, dated the same day and issued by the United States District Court for the Southern District of New York, which denied Claimant's motion for a preliminary injunction for lack of jurisdiction and dissolved the TRO issued on November 30, 2020.

On January 7, 2021, the parties filed notice that the Supreme Court of the State of New York extended the TRO issued on November 30, 2020 until January 14, 2021.

On January 12, 2021, Claimant filed a Court Notice issued by the Supreme Court of the State of New York, which extended the TRO until January 19, 2021 at 3:30 p.m.

In an Order dated January 13, 2021, the Panel granted Claimant's request for a permanent injunction and ruled, as follows:

The terms of the temporary injunction entered by the United States District Court for the Southern District of New York on November 30, 2020 in Case No. 20 cv 9779 and extended by the New York Supreme Court on [January 7, 2021] in [Case No.] 650012/2021 are adopted by the Panel and will expire on April 15, 2021, with the exception that Respondent [Antonio C.] Fernandez ["Respondent"] is enjoined from any activity involving Chesapeake Energy until June 1, 2021.

From the date of this Order until April 15, 2021, [Respondent] shall immediately be enjoined and restrained from, directly or through others, the following:

- A. Directly or indirectly using, disclosing, or permitting to be known [Claimant Intrepid Financial Partners LLC's ("Intrepid")] Confidential Information;

- B. Directly or indirectly removing from [Intrepid's] premises, or make any copies of, Confidential Information;
- C. Directly or indirectly, whether as an owner, partner, executive, director, consultant, contractor, advisor, agent, or employee, guarantor, surety or otherwise, or through any person, consulting with or in any way aiding or assisting any person to engage or attempt to engage in any employment, consulting, or other activity which directly or indirectly competes with the current business of Intrepid or business under development by Intrepid (the "Restricted Field")<sup>2</sup>;
- D. Directly or indirectly, on behalf of any party or person other than Intrepid, soliciting or inducing (or assisting or providing information in connection therewith) any current customer of Intrepid, or prospective customer of Intrepid that has been identified to [Respondent] or Confidential Information as to which is otherwise known to [Respondent] by reason of his Intrepid employment, to provide any [e]nergy [s]ector product, service, or business that is competitive with or substantially similar to any product, service, or business currently offered or currently planned to be offered by Intrepid, or to induce such current customer or prospective customer to reduce or diminish the volume or level of their business with Intrepid; and
- E. Directly or indirectly, on behalf of any party or person other than Intrepid, soliciting or inducing (or assisting or providing information in connection therewith) any employee of Intrepid to leave the employ of Intrepid.

Additionally, from the date of this Order until June 1, 2021, [Respondent] shall immediately be enjoined and restrained from, directly or through others, participating in any business activity involving Chesapeake Energy.

On January 27, 2021, Claimant filed correspondence withdrawing its claims for actual, incidental, compensatory, consequential, and punitive or exemplary damages and requesting that the Panel accept post-hearing submissions in regard to its request for attorneys' fees and expenses incurred ("Attorneys' Fees and Costs Motion"). On January 28, 2021, Respondent filed a response in opposition to the Attorneys' Fees and Costs Motion. On February 1, 2021, Claimant filed a reply to the opposition to the Attorneys' Fees and Costs Motion. In an Order dated February 5, 2021, the Panel granted the Attorneys' Fees and Costs Motion.

On February 19, 2021, Claimant filed an Application for an Award of Reimbursement of Its Reasonable Attorneys' Fees and Costs ("Application for Attorneys' Fees and Costs"), along with a Declaration in support thereof. On March 12, 2021, Respondent filed a Memorandum of Law in Opposition to the Application for Attorneys' Fees and Costs ("Memorandum of Law"), along with a Declaration in support thereof. On March 19, 2021, Claimant filed a Reply in Support of the Application for Attorneys' Fees and Costs.

The Award in this matter may be executed in counterpart copies.

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<sup>2</sup> In the Order dated January 13, 2021 and the Agreement, Restricted Field is defined as "any business enterprise that is engaged, or owns or controls a significant entity that is engaged in any place in the world in any Energy Sector business activities in which Intrepid and/or any of its affiliates are engaged primarily or in any substantial manner."

## **AWARD**

After considering the pleadings, the testimony and evidence presented at the injunctive 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 \$656,598.74 in attorneys' fees pursuant to the Agreement.
2. Respondent is liable for and shall pay to Claimant the sum of \$18,401.26 in costs.
3. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages and treble damages, are denied.

## **FEES**

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

### **Filing Fees**

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

Initial Claim Filing Fee	=\$ 1,575.00
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*\*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 Respondent's former firm, Intrepid Partners, LLC is assessed the following:

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

### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court.

Claimant is assessed:

Injunctive Relief Surcharge	=\$ 2,500.00
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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 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 the Panel @ \$1,125.00/session = \$ 1,125.00  
Pre-Hearing Conference: February 23, 2021 1 session

Seven (7) hearing sessions @ \$1,125.00/session = \$ 7,875.00  
Hearings: December 15, 2020 2 sessions  
December 22, 2020 2 sessions  
December 23, 2020 2 sessions  
December 28, 2020 1 session

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Total Hearing Session Fees = \$ 9,000.00

The Panel has assessed \$4,500.00 of the hearing session fees to Claimant.

The Panel has assessed \$4,500.00 of the hearing session fees to Respondent.

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

**ARBITRATION PANEL**

Linda Brooks	-	Non-Public Arbitrator, Presiding Chairperson
Sherry R. Wetsch	-	Public Arbitrator
Marquita Daniella Green	-	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**

***Linda Brooks***

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Linda Brooks  
Non-Public Arbitrator, Presiding Chairperson

**04/05/2021**

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

***Sherry R. Wetsch***

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Sherry R. Wetsch  
Public Arbitrator

**04/06/2021**

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

***Marquita Daniella Green***

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Marquita Daniella Green  
Public Arbitrator

**04/07/2021**

\_\_\_\_\_  
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.

April 07, 2021

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