

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Intellivest Securities, Inc.

Case Number: 20-04057

vs.

Respondent
Growth Capital Services, Inc.

Hearing Site: Atlanta, Georgia

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. Member

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Intellivest Securities, Inc. (“Claimant”): Daniel M. Kolber, Esq., Intellivest Securities, Inc., Riverdale, Georgia.

For Respondent Growth Capital Services, Inc. (“Respondent”): David Goldsmith, Growth Capital Services, Inc., San Francisco, California and Alvin L. Fishman, Esq., JRA Law Partners, LLP, San Francisco, California.

CASE INFORMATION

Statement of Claim filed on or about: December 15, 2020.
Claimant signed the Submission Agreement: December 14, 2020.

Statement of Answer filed on or about: February 3, 2021.
Amended Statement of Answer filed on or about: August 16, 2021.
Respondent signed the Submission Agreement: February 3, 2021.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: raiding; misappropriation of trade secrets; inducement of breach of fiduciary duty and duty of loyalty; tortious interference with economic advantage and business relations; conspiracy; unfair competition; and unjust enrichment. The causes of action relate to Claimant’s allegation that Respondent wrongfully raided Claimant, resulting in the abrupt resignation of all four of Claimant’s registered representatives. Claimant further alleges that because of Respondent’s

raid and subsequent interference with its clients, it was forced to cease virtually all its business operations.

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

RELIEF REQUESTED

In the Statement of Claim, Claimant requested that the panel enter an award:

1. Granting Claimant compensatory damages of no less than \$1,787,654.00;
2. Granting Claimant punitive damages of no less than \$893,827.00, computed at no less than 50% of the compensatory damages to be awarded but in no event greater than two times the compensatory damages award;
3. Ordering Respondent to cease and desist interfering with Claimant's clients;
4. Ordering Respondent to return Claimant's client and other business information;
5. Ordering Respondent to cease and desist using Claimant's methods and techniques, including, without limitation, their form of client contracts and provisions;
6. Granting Claimant's its attorneys' fees in an amount no less than \$32,275.00;
7. Granting Claimant its costs of no less than \$11,488.00;
8. Granting Claimant statutory interest of 7%;
9. Ordering Respondent to disgorge to Claimant any payments paid to Respondent by Claimant's clients that should have been paid to Claimant;
10. Ordering Respondent to cease and desist defaming Claimant's reputations; and
11. Granting Claimant such other and further relief as the Panel deems just and appropriate.

In the Statement of Answer, as amended, Respondent requested that Claimant's claims be dismissed in their entirety, that judgment be entered in favor of Respondent and against Claimant, that all costs of this action be cast upon Claimant, and that Respondent be granted such other and further relief deemed just and proper.

At the hearing, Claimant's total request for relief was \$12,516,856.00.

OTHER ISSUES CONSIDERED AND DECIDED

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

On August 16, 2021, Respondent filed a Motion to File Amended Statement of Answer ("Motion to Amend"). On August 22, 2021, Claimant filed an Opposition to the Motion to Amend. On August 25, 2021, Respondent filed a Reply to Claimant's Opposition to the Motion to Amend. In an Order dated September 2, 2021, the Panel granted the Motion to Amend.

On October 8, 2021, Claimant filed a Rule 13511 Motion for Discovery Sanctions combined with a Rule 13509 Motion to Compel ("Claimant's Motion for Sanctions"). The same day, Respondent filed a Motion for Discovery Sanctions combined with a Motion to Compel ("Respondent's Motion for Sanctions"). On October 15, 2021, Respondent filed an Opposition to Claimant's Motion for Sanctions. On October 16, 2021, Claimant filed an Opposition to Respondent's

Motion for Sanctions. In an Order dated October 25, 2021, the Panel denied Claimant's Motion for Sanctions and Respondent's Motion for Sanctions.

On November 15, 2021, Claimant filed a Rule 13511 Motion for Sanctions for Failing to Obey Panel's Order ("Claimant's Second Motion for Sanctions"). On November 19, 2021, Respondent filed an Opposition to Claimant's Second Motion for Sanctions. In an Order dated November 19, 2021, the Panel ordered Respondent to comply with Claimant's request for information immediately and indicated that sanctions and fees would be considered by the Panel if Respondent did not comply by the date the Order was published. On November 20, 2021, Claimant filed a Notice to Panel of Respondent's Contempt for Failing to Obey the Panel's Order of November 19, 2021. On November 22, 2021, Respondent filed a Motion for Reconsideration of Ruling to Panel's November 19, 2021 Order and Supplemental Reply in Opposition to Claimant's Second Motion for Sanctions. The Panel considered Claimant's Second Motion for Sanctions as part of the evidentiary hearing and herein denies the motion.

At the hearing, Respondent made an oral motion to dismiss. On the record, the Panel denied the oral motion to dismiss.

On January 3, 2022, Respondent filed an Expedited Motion to Strike Claimant's Post-Hearing Brief ("Motion to Strike"). The same day, Claimant filed a Response in Opposition to the Motion to Strike. Herein, the Panel denies the Motion to Strike.

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. Respondent is liable for and shall pay to Claimant the sum of \$440,187.50 in compensatory damages.
2. Respondent is liable for and shall pay to Claimant the sum of \$150,000.00 in punitive damages pursuant to O.C.G.A. Sections 51-12-5.1 and 10-1-763.
3. Respondent is liable for and shall pay to Claimant the sum of \$21,742.00 in costs.
4. Respondent is liable for and shall pay to Claimant the sum of \$295,000.00 in attorneys' fees pursuant to O.C.G.A. Section 10-1-764.
5. Respondent is liable for and shall pay to Claimant \$2,000.00 to reimburse Claimant for the non-refundable portion of the filing fee previously paid to FINRA Dispute Resolution Services.
6. Any and all claims for relief not specifically addressed herein 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 = \$ 3,400.00

**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 parties, Claimant and Respondent are each assessed the following:

Member Surcharge = \$ 3,025.00

Member Process Fee = \$ 6,175.00

Discovery-Related Motion Fees

Fees apply for each decision rendered on a discovery-related motion.

Two (2) decisions on discovery-related motions on the papers with the Panel @ \$600.00/decision = \$ 1,200.00

Claimant submitted one (1) discovery-related motion

Respondent submitted one (1) discovery-related motion

Total Discovery-Related Motion Fees = \$ 1,200.00

The Panel has assessed the total discovery-related motion 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 Arbitrator(s), including a pre-hearing conference with the Arbitrator(s), which lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) pre-hearing sessions with a single Arbitrator @ \$450.00/session = \$ 900.00

Pre-Hearing Conferences: August 6, 2021 1 session

October 18, 2021 1 session

One (1) pre-hearing session with the Panel @ \$1,400.00/session = \$ 1,400.00

Pre-Hearing Conference: April 7, 2021 1 session

Eighteen (18) hearing sessions @ \$1,400.00/session = \$ 25,200.00

Hearings: November 30, 2021 2 sessions

December 1, 2021 2 sessions

December 2, 2021 2 sessions

December 3, 2021 2 sessions

December 6, 2021 2 sessions

December 7, 2021 2 sessions

December 8, 2021 3 sessions

December 9, 2021	2 sessions
December 10, 2021	1 session

Total Hearing Session Fees	= \$ 27,500.00
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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

Paul Joseph McIntyre	-	Non-Public Arbitrator, Presiding Chairperson
Brian Walsh Devlin	-	Non-Public Arbitrator
Richard Moore	-	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

Paul Joseph McIntyre

Paul Joseph McIntyre
Non-Public Arbitrator, Presiding Chairperson

01/07/2022

Signature Date

Brian Walsh Devlin

Brian Walsh Devlin
Non-Public Arbitrator

01/07/2022

Signature Date

Richard Moore

Richard Moore
Non-Public Arbitrator

01/08/2022

Signature Date

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January 10, 2022

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