

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

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In the Matter of the Arbitration Between:

Claimant  
Ryan M. Hook

Case Number: 21-00092

vs.

Respondent  
Commerce Brokerage Services, Inc.

Hearing Site: Kansas City, Missouri

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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: Associated Person vs. Member

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimant Ryan M. Hook (“Claimant”): Jane L. Stafford, Esq., Stafford Law Firm LLC, Prairie Village, Kansas and Dwight K. Scroggins, Jr., Esq., St. Joseph, Missouri.

For Respondent Commerce Brokerage Services, Inc. (“Respondent”): Douglas M. Weems, Esq. and Duvel Pierre, Esq., Spencer Fane LLP, Kansas City, Missouri.

**CASE INFORMATION**

Statement of Claim filed on or about: January 14, 2021.

Amendment to Statement of Claim filed on or about: February 1, 2021.

Claimant signed the Submission Agreement: January 12, 2021.

Statement of Answer and Counterclaim filed on or about: January 27, 2021.

Statement of Answer to Amendment to Statement of Claim filed on or about: February 8, 2021.

Respondent signed the Submission Agreement: January 19, 2021.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted a claim alleging that Respondent terminated him in an effort to reduce its salary expenses and then filed a Form U5, as part of registration records maintained by the Central Registration Depository (“CRD”), that is defamatory and malicious. Claimant further asserted that the “Non-Solicitation of Customers” paragraph in the parties’ Non-Solicitation Agreement (“Agreement”) is unenforceable.

Unless specifically admitted in the Statement of Answer and Counterclaim, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses. Respondent asserted a claim for declaratory relief and alleged that it will suffer damages if the Agreement is not declared valid and binding.

In the Amendment to Statement of Claim, Claimant denied having any information regarding Respondent's clients.

Unless specifically admitted in the Statement of Answer to Amendment to Statement of Claim, as amended, Respondent denied the statements made in the Amendment to Statement of Claim and restated its allegations in the Statement of Answer and Counterclaim.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested the following:

1. Expungement of the Form U5 filed by Respondent and any amendments.
2. Injunctive relief, in the form of a preliminary injunction lasting until such time as an award is rendered, prohibiting, enjoining, and restraining Respondent, directly or indirectly, and whether alone or in concert with others, from the following conduct:
  - A. Reporting, publicizing, or otherwise making false statements with respect to Claimant.
  - B. Filing any reports with regulatory agencies regarding Claimant without providing fifteen (15) days' notice to Claimant prior to making such filing.
  - C. Explaining in extensive detail its purported reasons for termination of Claimant, based on and in line with the Form U5 it filed.
  - D. Making any disparaging or derogatory statements about Claimant, including with respect to any alleged noncompliance with industry rules or regulations by Claimant.
  - E. Threatening, taking action, intimidating, or otherwise acting in any manner to indicate agreements, arrangements, or any other matter prohibits Claimant from accepting individuals as clients as a registered representative of another registered broker-dealer.
  - F. Intimidating or otherwise acting in any manner to indicate agreements, arrangements, or any other matter prohibits Claimant from soliciting clients of any nature or kind and in any manner.
3. Declaratory relief stating that the "Non-Solicitation of Customers" paragraph in the Agreement, is void, unenforceable, and of no force or effect.
4. Payment of his last paycheck in the approximate gross amount of \$21,500.00 for November 30, 2021.
5. Such other and further relief as the Panel deems fair and equitable, including without limitation, an award of attorneys' fees and the assessment of costs against Respondent.

In the Statement of Answer and Counterclaim, Respondent requested that the Panel declare the Agreement to be valid and enforceable, award costs against Claimant, and award such other and further relief as the Panel deems appropriate.

In the Amendment to Statement of Claim, Claimant amended and reasserted the request in the Statement of Claim for injunctive relief, as follows:

1. A determination that public policy considerations, to protect the investing public under federal and state securities laws and to allow subsequent employment under R.S. Mo. § 431.202.5, overcome the conclusively presumed reasonableness of R.S. Mo. § 431.202.2, and a permanent injunction, prohibiting, enjoining, and restraining Respondent, directly or indirectly, whether alone or in concert with others, its affiliates, employees, agents, representatives, and anyone acting on its behalf or to its benefit, from enforcing or attempting to enforce the Agreement; or, alternatively,
2. A determination that public policy considerations, to protect the investing public under federal and state securities laws and to allow subsequent employment, do not overcome the conclusively presumed reasonableness of R.S. Mo. § 431.202.2, and a permanent injunction, prohibiting, enjoining, and restraining Respondent, directly or indirectly, whether alone or in concert with others, its affiliates, employees, agents, representatives, and anyone acting on its behalf or to its benefit, from enforcing or attempting to enforce the Agreement for a period of one year, except as follows:
  - i. Direct solicitation by Claimant in the form of communications to the clients that Claimant provided financial advice, for a period of one year from November 30, 2020, such clients being identified in writing to Claimant by Respondent (“Listed Clients”).
  - ii. For purposes of this relief, solicitation does not include:
    - a. Responding to client-initiated calls, texts, emails, or any other type of Listed Client initiated communications and accepting them as clients; and
    - b. Any type of advertising, communicating, or otherwise conveying information to or with the general public; and
3. A permanent injunction, prohibiting, enjoining, and restraining Respondent, directly or indirectly, whether alone or in concert with others, its affiliates, employees, agents, representatives, and anyone acting on its behalf or to its benefit, from making disparaging, derogatory, or defamatory statements about Claimant, including that Petitioner was terminated for money laundering or in any manner acting to “launder money,” unless required under law.

In the Statement of Answer to Amendment to Statement of Claim, Respondent requested costs and attorneys’ fees.

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

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

In the Order on Request for Permanent Injunction dated February 16, 2021, the Panel ruled as follows:

Claimant's motion for a permanent injunction is granted in part. Specifically, Respondent is permanently enjoined from enforcing the part of the [Agreement] that purports to prohibit Claimant from soliciting, diverting or taking away "the business or patronage of any of the clients, customers or accounts of [Respondent] as of the date of the termination of [Claimant's] employment[.]" Furthermore, Respondent is enjoined from enforcing the provision of the [Agreement] that purportedly prevents Claimant from "indirectly" soliciting clients, customers or accounts. Under Missouri law, those portions of the [Agreement] are too broad and are[,] therefore[,] unreasonable and unenforceable. See *Whelan Security Co. v. Kennebrew*, 379 S.W.3d 835, 844-45 (Mo. 2012).

In all other respects Claimant's motion for a permanent injunction is denied.

Besides the injunction described above, Claimant's motion for a permanent injunction against enforcement of the [Agreement] is denied. Specifically, the portion of the [Agreement] prohibiting Claimant from directly soliciting, diverting or taking away "any clients, customers or accounts that (i) he/she was assigned at any time during the course of employment at [Respondent]; (ii) that he/she called on or solicited during the course of employment at [Respondent]; or (iii) that he/she serviced or assisted others in servicing during the course of employment at [Respondent]" remains enforceable.

Claimant's request for an injunction against defamatory statements by Respondent's officers, employees, and agents is denied.

On February 1, 2021, Claimant filed a Motion to Amend Statement of Claim, to which no response was filed. In an Order dated February 6, 2021, the Panel granted Claimant's Motion to Amend Statement of Claim.

On March 9, 2021, Respondent filed a Motion for Clarification. On March 18, 2021, Claimant filed a Response to the Motion for Clarification. In an Order dated March 27, 2021, the Panel granted the Motion for Clarification, stating that the injunction prohibits Claimant from using third parties to solicit Respondent's clients, customers, or accounts.

On March 28, 2021, Claimant filed a Motion for Second Amendment to Statement of Claim and Supporting Reasons – Revised ("Motion for Second Amendment"). On April 7, 2021, Respondent filed an Opposition to the Motion for Second Amendment. On April 11, 2021, Claimant filed a Reply to the Opposition to the Motion for Second Amendment. In an Order dated April 13, 2021, the Panel denied Claimant's Motion for Second Amendment.

On April 8, 2021, Respondent filed a Partial Motion to Dismiss, pursuant to Rule 13504 of the Code of Arbitration Procedure ("Code"). On May 6, 2021, Claimant filed a Response to the Partial Motion to Dismiss. On May 10, 2021, Respondent filed Reply Suggestions in Support of the Partial Motion to Dismiss. In an Order dated May 26, 2021, the Panel deferred the decision on the Partial Motion to Dismiss. The Panel herein denies the Partial Motion to Dismiss.

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 claims for compensatory damages are denied in their entirety.
2. Respondent is liable for and shall pay to Claimant the sum of \$2,500.00 as reimbursement for the Injunctive Relief Surcharge.
3. The Panel recommends the expungement of the Termination Explanation in Section 3 of Claimant Ryan M. Hook's (CRD Number 6134240) Form U5 filed by Commerce Brokerage Services, Inc. on December 1, 2020 and the Amended Form U5 filed by Commerce Brokerage Services, Inc. on December 2, 2020 and maintained by the CRD. The Reason for Termination shall remain the same. The Termination Explanation shall be replaced with the following language: "Ryan M. Hook's termination was unreasonable, and the Firm's internal investigation was problematic. Mr. Hook breached internal bank policy with the deposit to his personal account of two cash transactions exceeding the Currency Transaction Reporting requirements by a de minimis amount." This directive shall apply to all references to the Termination Explanation. The Panel further recommends the expungement of the explanation for "amending the Reason for Termination and/or termination explanation" on the Amended Form U5 filed by Commerce Brokerage Services, Inc. on December 2, 2020 and maintained by the CRD. The response to this prompt should be deleted in its entirety and should appear blank.

The Panel further recommends that the response to the "Allegation(s)" question (Question 4) of the Termination DRP related to Occurrence Number 2102243 maintained by the CRD for Ryan M. Hook be expunged in its entirety and replaced with the following language: "Ryan M. Hook's termination was unreasonable, and the Firm's internal investigation was problematic. Mr. Hook breached internal bank policy with the deposit to his personal account of two cash transactions exceeding the Currency Transaction Reporting requirements by a de minimis amount." This directive shall apply to all references to the "Allegation(s)" question.

The above recommendations are made with the understanding that the registration records are not automatically amended. Ryan M. Hook must obtain confirmation of this Award from a court of competent jurisdiction, before the CRD will execute the expungement directive, and must forward a copy of the Court Order to FINRA's Credentialing, Registration, Education and Disclosure Department for the amendments to be incorporated into the Registration Records.

4. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, treble 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	= \$	425.00
Counterclaim 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, Respondent is assessed the following:

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

**Late Pre-Hearing Cancellation Fees**

Fees apply when a pre-hearing conference is cancelled within three business days of the scheduled conference:

June 4, 2021, cancellation requested by Respondent	= \$	300.00
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Total Late Pre-Hearing Cancellation Fees	= \$	300.00

The Panel has assessed the total late pre-hearing cancellation fees to Respondent.

**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:

Two (2) pre-hearing sessions with the Panel @ \$1,125.00/session	= \$	2,250.00
Pre-Hearing Conferences: April 22, 2021	1 session	
June 7, 2021	1 session	
Seven (7) hearing sessions @ \$1,125.00/session	= \$	7,875.00
Hearings: January 28, 2021	2 sessions	
February 10, 2021	1 session	
June 10, 2021	2 sessions	
June 11, 2021	2 sessions	

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Total Hearing Session Fees = \$ 10,125.00

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**

Stephen Douglas Bonney	-	Public Arbitrator, Presiding Chairperson
M. W. Gear	-	Public Arbitrator
Kelly T. Coughlin	-	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**

***Stephen Douglas Bonney***

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Stephen Douglas Bonney  
Public Arbitrator, Presiding Chairperson

***07/09/2021***

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Signature Date

***M W Gear***

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M. W. Gear  
Public Arbitrator

***07/09/2021***

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

***Kelly T. Coughlin***

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Kelly T. Coughlin  
Non-Public Arbitrator

***07/09/2021***

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

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July 12, 2021

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