

Stipulated Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Robert Michael Heller

Case Number: 21-00268

vs.

Respondent
William Joseph Pfeifer, III

Hearing Site: Phoenix, Arizona

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

REPRESENTATION OF PARTIES

For Claimant Robert Michael Heller (“Claimant”): Kevin Lampone, Esq., Matasar Jacobs LLC, Cleveland, Ohio.

For Respondent William Joseph Pfeifer, III (“Respondent”): Stephen J. Anthony, Esq., Anthony Law Group, Scottsdale, Arizona.

CASE INFORMATION

Statement of Claim filed on or about: February 1, 2021.
Amended Statement of Claim filed on or about: September 2, 2021.
Answer to the Counterclaim filed on or about: April 7, 2021.
Claimant signed the Submission Agreement: February 1, 2021.

Statement of Answer and Counterclaim filed by Respondent on or about: March 18, 2021.
Answer to the Amended Statement of Claim and Amended Counterclaim filed on or about: October 7, 2021.
Respondent signed the Submission Agreement: March 16, 2021.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: breach of contract; tortious interference with existing business relations; misappropriation of trade secrets in violation of the Arizona Uniform Trade Secrets Act; unfair competition; and injunctive relief.

In the Amended Statement of Claim, Claimant asserted defamation and violation of the CFAA, 18 U.S.C. § 1030 as additional causes of action.

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

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

In his Counterclaim and Amended Counterclaim, Respondent asserted the following causes of action: breach of contracts; tortious interference with existing business relationships; and injunctive relief.

Unless specifically admitted in the Answer to the Counterclaim, Claimant denied the allegations made in the Counterclaim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Compensatory damages of at least \$330,000.00 with the exact amount to be determined at hearing;
2. Punitive damages as the Panel deems appropriate;
3. Injunctive relief as follows:
 - a. enjoining Respondent from soliciting or inducing, whether directly or indirectly, and whether alone or in concert with others, any business from Claimant's restricted clients;
 - b. enjoining Respondent and anyone acting in concert with him, including but not limited to any agent, officer, employee or representative of Respondent from using, disclosing in any way the information contained in the records of Claimant regarding any of the restricted clients, including but not limited to, the names, addresses and confidential financial information of those customers; and
 - c. ordering Respondent, and anyone acting in concert with him, to return to Claimant any and all records, information and/or documents relating to any of the restricted clients, including but not limited to trade secrets, clients lists, client contact information (such as phone numbers and email addresses), information regarding

investment management, trading, product development, marketing plans, performance results, business plans, financial records, and all other financial, commercial, business or technical information, including all copies in any form. This also includes all records, information or documents, in any form, created by Respondent, or anyone acting in concert with him, based on documents or information that was received or removed from Claimant by Respondent, and specifically includes any and all lists of Claimant customer names.

4. Forum fees and costs be assessed against Respondent;
5. Attorneys' fees;
6. FINRA filing fees;
7. Expert fees;
8. All other costs incurred by Claimant in connection with this arbitration matter as expressly required under the parties' contract; and
9. Such further award for Claimant as the Panel determines is just and equitable based on the evidence.

In the Amended Statement of Claim, Claimant requested:

1. Compensatory damages of at least \$330,000.00 with the exact amount to be determined at hearing;
2. Punitive damages as the Panel deems appropriate;
3. Compensatory damages totaling at least \$5,000.00 with the exact amount to be determined at hearing, and such other relief as the Panel deems appropriate pursuant to 18 U.S.C. § 1030(g) as a result of Respondent's violation of the CFAA;
4. Amendment to the permanent injunction already issued by the Panel as necessary to address Respondent's continuing misconduct and to tailor the injunctive relief as discovery continues in this matter;
5. Forum fees and costs be assessed against Respondent;
6. Attorneys' fees;
7. FINRA filing fees;
8. Expert fees;
9. All other costs incurred by Claimant in connection with this arbitration matter as expressly required under the parties' contract; and
10. Such further award for Claimant as the Panel determines is just and equitable based on the evidence.

In the Statement of Answer and Answer to the Amended Statement of Claim, Respondent requested:

1. Claimant's claims be dismissed in their entirety and Claimant be awarded nothing;
2. No further injunction be issued;
3. Attorneys' fees, litigation costs, and arbitration costs; and
4. Such other and further relief as the Panel deems just and proper under the circumstances.

In the Counterclaim, Respondent requested:

1. On Count One, breach of contract – August 7, 2020 agreement, compensatory damages in the principal amount of \$45,000.00 plus pre- and post-judgment interest at the highest allowable rate;
2. On Counts Two and Three, breach of contract – November 13, 2020 agreements and tortious interference with existing business relationships, compensatory damages of at least \$60,000.00 with the exact amount to be proved at hearing and such punitive damages as the Panel deems appropriate;
3. Injunctive relief restraining Claimant and any and anyone acting in concert with him including but not limited to his wife, agent, officer, employee, or representative from making any disparaging remarks about Respondent and restraining Claimant from saying anything about Respondent other than what was agreed to be said in the November 13, 2020 Practice Acquisition Agreement;
4. Attorney's fees, litigation costs, and arbitration costs incurred in this matter; and
5. Such other and further relief as the Panel deems just and proper under the circumstances.

In the Amended Counterclaim, Respondent requested:

1. On Counts Two and Three, breach of contract – November 13, 2020 agreements and tortious interference with existing business relationships, compensatory damages of at least \$60,000.00 with the exact amount to be proved at hearing and such punitive damages as the Panel deems appropriate;
2. Injunctive relief restraining Claimant and any and anyone acting in concert with him including but not limited to his wife, agent, officer, employee, or representative from making any disparaging remarks about Respondent and restraining Claimant from saying anything about Respondent other than what was agreed to be said in the November 13, 2020 Practice Acquisition Agreement;
3. Attorney's fees, litigation costs, and arbitration costs incurred in this matter; and
4. Such other and further relief as the Panel deems just and proper under the circumstances.

In the Answer to the Counterclaim, Claimant requested:

1. Respondent's claims in the Counterclaim be dismissed in their entirety and order that Respondent be awarded nothing;
2. All forum fees and costs of the arbitration, including arbitrator hearing fees, be assessed against Respondent;
3. Attorneys' fees, FINRA filing fees, expert fees and all other costs incurred by Claimant in connection with this arbitration matter as expressly required under the terms of the parties' contract; and
4. Such further award for Claimant as the Panel determines is just and equitable based on the evidence.

OTHER ISSUES CONSIDERED AND DECIDED

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

On July 23, 2021, Claimant filed a Motion to Amend the Statement of Claim. On August 9, 2021, Respondent filed an opposition to the motion. On August 16, 2021, Claimant filed his reply in support of the motion. On September 2, 2021, the Panel granted the motion.

On August 20, 2021, Respondent filed a Motion to Dismiss and Claimant filed a Motion to Dismiss Count One of the Counterclaim. On October 4, 2021, Claimant filed an opposition to Respondent's motion and Respondent filed an opposition to Claimant's motion. On October 18, 2021, Respondent filed his reply to Claimant's opposition and Claimant filed his reply to Respondent's motion. On October 22, 2021, the Panel denied Respondent's Motion to Dismiss and granted Claimant's Motion to Dismiss Count One of the Counterclaim.

On December 23, 2021, the parties filed a Motion for Entry of a Stipulated Award. On January 3, 2022, the Panel granted the motion.

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

AWARD

The parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for entry of a Stipulated Award, and the written stipulation thereto, the Panel grants the motion and enters this Stipulated Award granting the following relief:

1. For purposes of this Order, "Restricted Clients" means all clients of Claimant or of Heller Financial Services as of the November 13, 2020 Closing Date of the Practice Acquisition Agreement executed by Claimant and Respondent except for the Restricted Clients that previously transferred to Respondent prior to the entry of this Order, which Respondent has represented and warranted are solely those that have been expressly identified on Exhibit A to the Parties' Memorandum of Understanding entered into on October 20, 2021.
2. Respondent is hereby enjoined from, whether directly or indirectly, contacting or attempting to contact (whether for social purposes or otherwise), soliciting or attempting to solicit, attempting to do business with, or accepting business of any kind from any Restricted Client whether acting on his own behalf, or on behalf of any other person or entity, through and including November 22, 2023.

3. Respondent and anyone acting in concert with him, including but not limited to any agent, officer, employee or representative of Respondent, are hereby enjoined from using or disclosing in any way information that was contained in the records of Claimant or Heller Financial Services regarding any of the Restricted Clients including but not limited to, the names, addresses and confidential financial information of those customers.
4. Respondent is hereby directed to immediately delink, unfriend or disconnect from any connection with any Restricted Client on LinkedIn or Facebook or any other social media platform, and remain delinked, unfriended or disconnected until December 20, 2023. Respondent is hereby enjoined from communicating with, contacting, responding, "liking," "linking," commenting, giving a "thumbs up," reacting, or accepting any invitation to connect or communicate with any Restricted Client on Facebook or any other social media platform, including but not limited to LinkedIn, Facebook, Twitter, Instagram, or other new or existing platform, and in any way or manner, through December 20, 2023. Notwithstanding the foregoing, where Respondent cannot control in advance if a Restricted Client starts following him because no invitation acceptance is needed, such as in Instagram, Respondent is hereby directed to block any Restricted Client that follows him on any such platforms as soon as Respondent is aware of the Restricted Client following him.
5. In the event any Restricted Client with whom Respondent initiated contact after November 13, 2020 contacts Respondent and inquires about transferring their accounts to Respondent, Respondent agrees to only state the following: "Will Pfeifer and Rob Heller have mutually agreed to amicably end our working relationship. As such, Will is no longer affiliated with Heller Financial Services. Rob has assumed the sole responsibility of servicing the clients of Heller Financial." Respondent shall thereafter immediately refer that client to Claimant for handling with no further contact, including no mention or discussion of Respondent's competing business, his services, his staff, or anything bearing on his occupation or livelihood. Respondent is further ordered to provide immediate notice to Claimant, within twenty-hour (24) hours, of all such inquiries.
6. In the event any Restricted Client transfers to Respondent or GoldBook Financial or any other firm to which Respondent moves, where Respondent assisted in any way with the transfer, or if Respondent in any way receives remuneration, or promises of future remuneration, as a result of such client's transfer, even if the client is serviced by a different advisor, at any time through and including November 22, 2023, it is hereby ordered that Respondent shall pay to Claimant or such other individual(s) or entity that is designated by Claimant, four times (4x) the annual fees paid by each such Restricted Client to Mass Mutual during the prior twelve (12) months that the client was at Claimant, which the Parties agrees are a genuine pre-estimate of damages and not a penalty. The payment is hereby ordered to be paid by wire transfer to Claimant within ten (10) days of the Restricted Client transferring their account(s).

7. The Panel will retain jurisdiction over this matter through the term of the Injunction for any purpose that may be necessary or appropriate to implement or enforce the Injunction, including, without limitation, through future orders or proceedings for civil or criminal contempt. If Respondent violates any of the terms of this Award and Stipulated Permanent Injunction, Respondent shall pay Claimant's attorneys' fees, expenses and costs incurred in connection therewith, with further equitable and injunctive relief as appropriate.
8. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, are denied.

FEES

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

Filing Fees

FINRA Dispute Resolution Services will retain or collect the non-refundable filing fees* for each claim:

| | |
|--------------------------|--------------|
| Initial Claim Filing Fee | =\$ 1,425.00 |
| Counterclaim Filing Fee | =\$ 1,425.00 |

**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 Claimant’s and Respondent’s current firm, MML Investor Services, LLC is assessed the following:

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|--------------------|--------------|
| 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:

| | |
|--|------------|
| March 4, 2021, cancellation requested by Parties | =\$ Waived |
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Postponement Fees

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

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| March 5, 2021, postponement requested by Parties | =\$ Waived |
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Last-Minute Cancellation Fees

Fees apply when a hearing on the merits is cancelled within ten calendar days before the start of a scheduled hearing session:

March 5, 2021 cancellation requested by Parties = \$ Waived

Injunctive Relief Fees

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

Robert Michael Heller is assessed:

Injunctive Relief Surcharge = \$ 2,500.00

Hearing Session Fees and Assessments

The Arbitrator/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: March 25, 2021 1 session

Decision on the papers: = \$ 300.00

Total Hearing Session Fees = \$ 1,425.00

The Panel has assessed \$712.50 of the hearing session fees to Claimant.

The Panel has assessed \$712.50 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

| | | |
|---------------------|---|--|
| Richard Kent Mahrle | - | Public Arbitrator, Presiding Chairperson |
| Jay Lawrence Witkin | - | Public Arbitrator |
| Steven M. Guttell | - | 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

Richard Kent Mahrle

Richard Kent Mahrle
Public Arbitrator, Presiding Chairperson

01/11/2022

Signature Date

Jay Lawrence Witkin

Jay Lawrence Witkin
Public Arbitrator

01/10/2022

Signature Date

Steven M. Guttell

Steven M. Guttell
Non-Public Arbitrator

01/11/2022

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.

January 12, 2022

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