

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Intellivest Securities, Inc.

Case Number: 21-01360

vs.

Respondent
Keen Growth Capital Fund II LP

Hearing Site: Tampa, Florida

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. Non-Member

REPRESENTATION OF PARTIES

For Claimant Intellivest Securities, Inc.: Daniel H. Kolber, Executive Representative, Intellivest Securities, Inc., Riverdale, Georgia.

For Respondent Keen Growth Capital Fund II LP: Howard N. Kahn, Esq., Kahn & Resnik P.L., Fort Lauderdale, Florida.

CASE INFORMATION

Statement of Claim filed on or about: May 25, 2021.

Intellivest Securities, Inc. signed the Submission Agreement: May 25, 2021.

Statement of Answer filed by Respondent on or about: August 16, 2021.

Keen Growth Capital Fund II LP signed the Submission Agreement: August 17, 2021.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: breach of contract; and breach of the implied covenant of good faith and fair dealing. The causes of action relate to Claimant's allegation that there was a breach of an investment banking agreement and several emails, and that Respondent did not pay Claimant one or more fees.

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 actual damages in the amount of at least \$10,000.00, plus interest, together with attorneys' fees, costs and filing costs under O.C.G.A. §13-6-11 and such other and further relief as the Arbitrator deemed just and appropriate.

In the Statement of Answer, Respondent requested: that the Arbitrator dismiss Claimant's Statement of Claim with prejudice and strike Claimant's Statement of Claim for attorneys' fees; attorneys' fees; costs; and such other and further relief as the Arbitrator deemed just and proper.

At the close of the hearing, Claimant requested actual damages in the amount of \$25,000.00, costs and attorneys' fees.

At the close of the hearing, Respondent requested a finding that it is entitled to recover attorneys' fees from Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

On or about August 16, 2021, Respondent filed a Motion to Dismiss pursuant to Rule 13504 of the Code of Arbitration Procedure ("Code"). On or about September 20, 2021, Claimant filed a response opposing the Motion to Dismiss. On or about September 24, 2021, Respondent filed a reply in support of its Motion to Dismiss. On October 21, 2021, the Arbitrator heard oral arguments on the Motion to Dismiss. On or about October 22, 2021, the Arbitrator denied the Motion to Dismiss.

On or about January 18, 2022, Respondent filed a Motion to Hold the February 8, 2022, and February 9, 2022, Hearing by Videoconference. No opposition was filed by Claimant. On or about January 31, 2022, the Arbitrator issued an Order that denied the Motion and stated that the hearing would proceed in-person.

On or about January 31, 2022, Respondent filed an Expedited Motion to Dismiss. On or about February 3, 2022, Claimant filed a response opposing the Motion to Dismiss. Prior to the hearing, the Arbitrator heard oral arguments on the Motion to Dismiss for lack of jurisdiction, which the Arbitrator denied.

At the conclusion of Claimant's case-in-chief, Respondent moved to dismiss the case based on Claimant's alleged failure to prove its claim, which the Arbitrator denied.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and any post-hearing submissions, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are denied in their entirety.

2. Any and all claims for relief not specifically addressed herein, including any requests for 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 = \$ 1,050.00

**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, Claimant is assessed the following:

Member Surcharge = \$ 450.00

Hearing Session Fees and Assessments

The Arbitrator has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Arbitrator, including a pre-hearing conference with the Arbitrator, which lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) pre-hearing sessions with a single Arbitrator @ \$450.00/session = \$ 1,350.00
Pre-Hearing Conferences: September 14, 2021 1 session
October 21, 2021 1 session
January 24, 2022 1 session

Four (4) hearing sessions @ \$450.00/session = \$ 1,800.00
Hearings: February 8, 2022 2 sessions
February 9, 2022 2 sessions

Total Hearing Session Fees = \$ 3,150.00

The Arbitrator has assessed \$2,250.00 of the hearing session fees to Claimant.

The Arbitrator has assessed \$900.00 of the hearing session fees to Respondent.

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

ARBITRATOR

David M. Snyder

-

Sole 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.

Arbitrator's Signature

David M. Snyder

David M. Snyder
Sole Public Arbitrator

02/18/2022

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.

February 18, 2022

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