

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Robin Lee Taliaferro

Case Number: 21-02218

vs.

Respondents
Sutter Securities Incorporated
Sutter Capital Partners, LLC

Hearing Site: Los Angeles, California

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 and Non-Member

This matter proceeded pursuant to Rule 13800 of the Code of Arbitration Procedure (“Code”).

REPRESENTATION OF PARTIES

For Claimant Robin Lee Taliaferro (“Claimant”): Stephen Young, Esq., Keesal, Young & Logan, Long Beach, California.

For Respondents Sutter Securities Incorporated (“Sutter Securities”) and Sutter Capital Partners, LLC (“Sutter Capital”): R. Craig Zafis, Esq., Zafis Law, Escondido, California.

Hereinafter, Sutter Capital and Sutter Securities are collectively referred to as “Respondents”.

CASE INFORMATION

Statement of Claim filed on or about: August 27, 2021.

Claimant signed the Submission Agreement: August 27, 2021.

Statement of Answer filed by Respondents on or about: October 18, 2021.

Sutter Securities signed the Submission Agreement: November 16, 2021.

Sutter Capital signed the Submission Agreement: October 14, 2021.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: breach of contract; breach of implied covenant of good faith and fair dealing; and unjust enrichment.

In the Statement of Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Damages in the amount of \$50,000.00; and
2. Other and further relief as the Arbitrator deems to be just and equitable.

In the Statement of Answer, Respondents requested that this matter be stayed or dismissed without prejudice.

OTHER ISSUES CONSIDERED AND DECIDED

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

On October 18, 2021, Respondents filed a motion to stay or dismiss this matter without prejudice within their Statement of Answer. On October 27, 2021, Claimant filed his opposition to Respondents' motion. On November 1, 2021, Respondents filed a reply to Claimant's opposition. The Arbitrator hereby denies Respondents' motion.

The Arbitrator has provided an explanation of the decision in this award. The explanation is for the information of the parties only and is not precedential in nature.

FINDINGS

There can be no quibble that under Section 8(a)(i) and (v), and 8(b) of the Independent Registered Representative Agreement ("Agreement"), costs and expenses from a "liability" or "damage" or "claim", including the legal fees – that Respondents incur in responding to the pending FINRA investigation stem "from [Claimant's] activities" and that Claimant must indemnify Respondents for such costs on demand, presumably subject to verification.

The question is whether the costs-against-commission offsets allowed under Section 6(c) also apply to claims for indemnification under Section 8. The answer is "No".

Under Section 6, "[a]ny amounts due to [Respondents] for [Claimant's] costs and expenses . . . shall be due at [Respondents'] option, either (i) on the statement date or (ii) deducted by [Respondents] [without time limit] – from the amount due Claimant 'hereunder'". "Hereunder" what? It does not say "Agreement", so "hereunder" appears to refer only to Section 6(c) which narrowly and consistently limits Respondents' offset rights to Claimant's own business expenses described therein, incurred in his work as an independent contractor, not those expenses Respondents incur defending third party claims resulting from Claimant's activities. The latter are Section 8 indemnification claims.

This interpretation is supported by Schedule A, which is referred to only in Section 6 – not section 8 – and lists the same type of operational costs and expenses incurred by Respondents described in Section 6 itself. It appears undisputed that the only Section 6(c) expenses for which Claimant was responsible after he left are ticket charges, administrative fees, and FINRA and SIPC fees totaling \$1,591.00.

Nor does Section 6 expressly allow Respondents to withhold Claimant's compensation against Section 8 indemnification claims – like the pending FINRA investigation. Likewise, Section 8 could have included an offset against compensation feature like that in Section 6, but it does not. Nor does the Section 6 offset feature cross reference Section 8 or vice versa. There is no provision for offset anywhere else in the Agreement. Such an explicit provision would not be unreasonable, but it does not exist, and the Arbitrator cannot engraft such a provision on the parties' Agreement.

Accordingly, while the question is somewhat close, there is insufficient support in the Agreement to allow Section 6 offsets for Section 8 indemnity claims. The \$50,000.00 shall be released to Claimant without further delay.

AWARD

After considering the pleadings, the Arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Sutter Securities is liable for and shall pay to Claimant the sum of \$50,000.00 in compensatory damages.
2. FINRA Dispute Resolution Services shall retain the \$600.00 filing fee that Claimant deposited previously.
3. Sutter Securities is liable for and shall pay to Claimant \$600.00 to reimburse Claimant for the filing fee previously paid to FINRA Dispute Resolution Services.
4. Any and all claims for relief not specifically addressed herein are denied.

FEES

Pursuant to the Code:

Sutter Securities has paid to FINRA Dispute Resolution Services the \$750.00 Member Surcharge and \$1,750.00 Member Process Fee previously invoiced.

ARBITRATOR

Thomas E. Shuck

-

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

Thomas E Shuck

Thomas E. Shuck
Sole Public Arbitrator

12/15/2021

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.

December 15, 2021

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