

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant
James Patrick Smyth

Case Number: 17-02315

vs.

Respondent
Cantor Fitzgerald & Co.

Hearing Site: New York, New York

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant James Patrick Smyth (“Smyth”): Ross B. Intelisano, Esq., Rich Intelisano & Katz LLP, New York, New York.

For Respondent Cantor Fitzgerald & Co. (“CF & CO”): Nirav S. Shah, Esq., Cantor Fitzgerald, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: August 29, 2017.

Answer to Counterclaim filed on or about: December 20, 2017.

James Patrick Smyth signed the Submission Agreement: July 27, 2017.

Statement of Answer and Counterclaim filed by Respondent on or about: November 16, 2017.

Cantor Fitzgerald & Co. signed the Submission Agreement: November 20, 2017.

CASE SUMMARY

Claimant asserted the following causes of action: violation of Age Discrimination Employment Act, 29 U.S.C § 621 *et seq.* (“ADEA”), violation of the NY State Human Rights Law, N.Y. Exec. Law § 290 *et seq.* (“NYSHRL”), violation of the New York City Human Rights Law, N.Y.C. Admin. Code § 8-101 *et seq.* (“NYCHRL”), breach of contract, breach of the covenant of good faith and fair dealings, failure to pay compensation, breach of securities industry rules, regulation and standards of conduct, wrongful discharge, unjust enrichment, tortious interference with business relations, quantum meruit and other similar 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.

In the Counterclaim, Respondent asserted the following causes of action: recovery of promissory note, misappropriation of CF&CO's confidential information, breach of employment agreement, misappropriation of trade secrets, breach of fiduciary duty and/or duty of loyalty, and causes of action under the New York faithless servant doctrine.

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

RELIEF REQUESTED

In the Statement of Claim, Claimant requested an award of damages of at least \$4.25 million, back pay with prejudgment interest, front pay and benefits to the extent reinstatement is not feasible, compensatory damages for non-economic injuries in an amount authorized by NYSHRL and the NYCHRL, punitive damages as authorized by the NYCHRL, liquidated damages in an amount equal to twice Smyth's back pay losses as authorized by the ADEA, interest, costs, attorneys' fees, other damages and such other and further relief as to the Arbitrators may appear just and proper.

In the Statement of Answer and Counterclaim, Respondent requested that the Panel issue an award dismissing the Statement of Claim in its entirety, granting damages in an amount to be determined at the hearing, granting CF&CO's Counterclaim relief damages of \$58,406.97, pre-judgment interest pursuant to CPLR § 5001(a), costs and expenses, attorneys' fees and such other and further relief as the Panel deems appropriate.

In the Answer to Counterclaim, Claimant requested that Respondent's Counterclaim be denied and dismissed.

At the close of the hearing, Claimant requested damages of \$3.7 million dollars.

At the conclusion of its case, Respondent withdrew its Counterclaim based on breach of covenants.

OTHER ISSUES CONSIDERED AND DECIDED

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

The parties present at the hearing have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the 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 \$594,944.00 in damages.
2. Respondent is liable for and shall pay to Claimant interest on the above-stated sum at the rate of 9% per annum from August 29, 2017 until paid in full.
3. Respondent is liable for and shall pay to Claimant the sum of \$250,000.00 in attorneys' fees pursuant to agreement of the parties and N.Y. Labor Law.
4. Respondent is liable for and shall pay to Claimant the sum of \$26,306.87 in costs.
5. Respondent shall reimburse Claimant for the \$600.00 non-refundable portion of the claim filing fee previously paid by Claimant to FINRA Office of Dispute Resolution.
6. Claimant's statutory employment discrimination claim is denied.
7. Respondent's Counterclaim is denied.
8. Any and all claims for relief not specifically addressed herein, including punitive damages fees are denied.

ARBITRATORS' REPORT

The Panel determined that the Claimant did not misappropriate information or violate any covenants between the Claimant and the Respondent after the Respondent made a full presentation of those claims against the Claimant in counterclaim. The last minute withdrawal of any Counterclaim by Respondent, just before closing, after a full presentation of evidence, does not shield the Respondent from this final disposition of the Claims and Counterclaims.

FEES

Pursuant to the Code of Arbitration Procedure, the following fees are assessed:

Filing Fees

FINRA Office of Dispute Resolution assessed a filing fee* for each claim:

Initial Claim Filing Fee

= \$ 2,000.00

Counterclaim Filing Fee = \$ 1,750.00

**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 that employed the associated person at the time of the event giving rise to the dispute. Accordingly, as a party, Respondent Cantor Fitzgerald & Co. is assessed the following:

Member Surcharge = \$ 3,025.00
Member Process Fee = \$ 6,175.00

Postponement Fees

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

September 12, 2019, postponement by Respondent = \$1,400.00

Total Postponement Fees = \$1,400.00

The Panel assessed the \$1,400.00 postponement fees to Respondent.

Last Minute Cancellation Fees

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

September 12, 2019, postponement requested by Respondent = \$ 1,800.00

Total Last Minute Cancellation Fees = \$ 1,800.00

The Panel assessed the \$1,800.00 last minute cancellation 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 arbitrators, including a pre-hearing conference with the arbitrators, that 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: February 5, 2019 1 session
March 4, 2019 1 session

Two (2) pre-hearing sessions with the Panel @ \$1,400.00/session = \$ 2,800.00
Pre-hearing conferences: January 29, 2018 1 session
April 24, 2019 1 session

Sixteen (16) hearing sessions @ \$1,400.00/session		= \$22,400.00
Hearing Dates:	March 4, 2019	2 sessions
	March 5, 2019	2 sessions
	September 9, 2019	2 sessions
	September 10, 2019	2 sessions
	September 11, 2019	2 sessions
	September 17, 2019	2 sessions
	September 18, 2019	2 sessions
	October 3, 2019	2 sessions
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Total Hearing Session Fees		= \$26,100.00

The Panel has assessed the \$26,100.00 hearing session fees to Respondent.

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

ARBITRATION PANEL

William G. Binckes	-	Public Arbitrator, Presiding Chairperson
Ronald Harris Kisner	-	Public Arbitrator
Leslie Conason	-	Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Concurring Arbitrators' Signatures

William G. Binckes

William G. Binckes
Public Arbitrator, Presiding Chairperson

10/24/2019

Signature Date

Ronald Harris Kisner

Ronald Harris Kisner
Public Arbitrator

10/24/2019

Signature Date

Leslie Conason

Leslie Conason
Public Arbitrator

10/24/2019

Signature Date

October 25, 2019

Date of Service (For FINRA Office of Dispute Resolution office use only)