

COMMONWEALTH OF MASSACHUSETTS  
SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

SUFFOLK, SS.

CIVIL ACTION NO. 2184CV02516

CREDIT SUISSE SECURITIES (USA) LLC, )  
 )  
Plaintiff and Defendant-in- )  
Counterclaim, )  
 )  
v. )  
 )  
KEITH MELANSON, )  
 )  
Defendant and Plaintiff-in- )  
Counterclaim. )

EFILED 11/24/21 HD

**DEFENDANT KEITH MELANSON'S ANSWER**  
**TO PLAINTIFF'S APPLICATION TO CONFIRM ARBITRATION AWARD AND**  
**COUNTERCLAIM TO VACATE ARBITRATION AWARD**

Defendant and Plaintiff-in-Counterclaim Keith Melanson ("Melanson") hereby answers the Application to Confirm Arbitration Award ("Application") of Plaintiff and Defendant-in-Counterclaim Credit Suisse Securities (USA), LLC ("Credit Suisse") as follows:

All headers, sub-headers, and unnumbered paragraphs set forth in the Application are denied unless specifically admitted.

**PARTIES**

1. Melanson is without sufficient information to admit or deny the allegations of paragraph 1, therefore they are denied.
2. Admitted.

**VENUE AND JURISDICTION**

3. Paragraph 3 contains a legal conclusion to which no response is required. To the extent a response is required, Melanson denies the allegations in paragraph 3.

4. Paragraph 4 contains a legal conclusion to which no response is required. To the extent a response is required, Melanson denies the allegations in paragraph 4.

### **FACTS**

5. Admitted that Credit Suisse commenced an arbitration proceeding against Melanson on or about June 27, 2019 but denied that Melanson is obligated to repay the promissory note that was the subject of that proceeding.

6. Admitted that the arbitration proceeding was governed by the FINRA rules but denied that the Arbitrators properly applied those rules.

7. Admitted.

8. Admitted.

9. Admitted.

10. Admitted that the Panel found in Credit Suisse's favor but denied that said award is valid or enforceable.

11. Admitted that the Panel found in Credit Suisse's favor but denied that said award is valid or enforceable.

12. Admitted that the Panel found in Credit Suisse's favor but denied that said award is valid or enforceable.

13. Admitted that the Panel found in Credit Suisse's favor but denied that said award is valid or enforceable.

14. Paragraph 14 recites statutory text to which no response is required.

15. Denied.

## **AFFIRMATIVE DEFENSES**

### **FIRST AFFIRMATIVE DEFENSE**

Credit Suisse's claims are barred by the doctrines of waiver, estoppel and unclean hands.

### **SECOND AFFIRMATIVE DEFENSE**

Credit Suisse's claims are barred by its prior material breach of contract.

### **THIRD AFFIRMATIVE DEFENSE**

Melanson reserves the right to assert other applicable affirmative defenses as may become available or apparent during discovery proceedings. Melanson further reserves the right to amend his Answer and/or Affirmative Defenses accordingly and/or delete affirmative defenses that he determines are not applicable during the course of subsequent discovery.

## **COUNTERCLAIM**

### **INTRODUCTION**

1. This counterclaim is being brought to vacate the arbitration award pursuant to G. L. c. 251, § 12.

2. Credit Suisse has characterized the underlying arbitration as a run-of-the-mill action to recover amounts due under a standard promissory note. Notwithstanding this position, as set forth below and as presented to the Arbitrators, this characterization grossly misrepresents what actually occurred between the parties.

3. The truth is that this case involves a well-planned scheme by Credit Suisse to induce successful financial advisors, like Melanson, to join and remain at the firm by offering them financial incentives. These payments were structured as "promissory notes" for purely tax reasons, but they would be entirely forgivable and would not need to be repaid.

4. Having successfully convinced Melanson, among many other advisors, to join its U.S. Wealth Management business while simultaneously multiplying its assets under management, Credit Suisse then sold that very same business unit to Wells Fargo Advisors, LLC (“Wells Fargo”) for millions of dollars, effectively terminating the advisors’ employment and leaving them with no choice but to begin working for Wells Fargo.

5. Credit Suisse orchestrated and executed this plan without ever notifying Melanson, and then, when he was cast aside, Credit Suisse demanded that he repay the funds it had used to entice him to join its business in the first place. Perhaps more importantly, when it sold the business to Wells Fargo, Credit Suisse was effectively paid on the note in question.

6. In the course of the arbitration proceeding, Melanson served Credit Suisse with discovery requests for documents and information concerning these very activities. Following Credit Suisse’s unjustified refusal to provide materials responsive to those requests, Melanson filed a Motion to Compel asking the Arbitrators to order Credit Suisse to provide them.

7. The Arbitrators inexplicably denied Melanson’s Motion to Compel, thereby prohibiting him from providing evidence in support of his defense to Credit Suisse’s claims.

8. Because the Arbitrators refused to hear evidence material to the controversy that was at the heart of the arbitration proceeding, the award that was issued in Credit Suisse’s favor must be vacated.

#### PARTIES

9. Defendant and Plaintiff-in-Counterclaim Keith Melanson (“Melanson”) is an individual residing in Massachusetts.

10. Plaintiff and Defendant-in-Counterclaim Credit Suisse Securities (USA) LLC (“Credit Suisse”) is a Delaware limited liability company with a usual place of business located at One Federal Street, Boston, Massachusetts.

### FACTS

11. Melanson is a financial advisor with nearly thirty (30) years of experience in the industry. Prior to joining Credit Suisse in 2011, he developed a substantial practice representing the financial interests of numerous successful and wealthy individuals.

12. In or about 2011, Credit Suisse began to aggressively recruit Melanson, offering him as an incentive a loan that it represented would be forgivable (the “Note”).

13. Credit Suisse expressed to Melanson that, although the Note called for the accrual of annual interest, such interest would be paid by funds that Melanson generated for the firm during the course of his employment.

14. This was a common practice in the industry, and it was understood that the Note would be “paid off” over time and not in one lump sum.

15. Based on Credit Suisse’s representations, Melanson agreed to begin employment with the company in April 2011.

16. Prior to commencing his employment, Melanson executed an employment contract with Credit Suisse in the form of an Offer Letter, the terms of which were designed to ensure that he would remain at Credit Suisse.

17. While Melanson fully intended to perform his obligations under the Offer Letter and the Note, Credit Suisse breached those agreements.

18. Specifically, unbeknownst to Melanson, Credit Suisse made a decision in 2015 to close its U.S. Wealth Management business and “sell” it to Wells Fargo, resulting in Melanson’s constructive discharge.

19. Credit Suisse’s decision to sell its business to Wells Fargo made it impossible for Melanson to comply with his obligations under the Offer Letter and the Note.

20. Furthermore, Credit Suisse reaped the benefits of its breach by intentionally structuring the sale in a way that would benefit itself financially.

21. Although it negotiated with Wells Fargo to sell the business, this sale, in effect, was actually a purchase and exchange of Credit Suisse’s brokers and clients.

22. This is precisely what Wells Fargo received from Credit Suisse in connection with the deal, and brokers like Melanson were left with no real option but to comply with the terms of the arrangement.

23. In effect, Credit Suisse made it impossible for Melanson to continue to work there or to pay off the Note as originally contemplated.

24. Importantly, Credit Suisse cannot prove that it has incurred any damages. It sold both Melanson and his book of business to Wells Fargo, made millions on the deal, and now, incredibly, wants to make more money by forcing Melanson to pay the Note.

25. On or about June 27, 2019, Credit Suisse commenced an arbitration proceeding against Melanson.

26. Melanson’s defense in the arbitration was premised on the circumstances surrounding Credit Suisse’s decision to sell its U.S. Wealth Management business to Wells Fargo in 2015, which resulted in his constructive discharge and prevented him from earning the

income that he expected would pay off the Note. Melanson also intended to prove that in fact Credit Suisse was paid in full on the Note by Wells Fargo.

27. On November 25, 2019, Melanson served Credit Suisse with his First Request for Documents and Information (the “First Request”). A true and accurate copy of Melanson’s First Request for Documents and Information is attached hereto as Exhibit A.

28. On February 1, 2021, Melanson served Credit Suisse with his Second Request for Documents and Information (the “Second Request”). A true and accurate copy of Melanson’s Second Request for Documents and Information is attached hereto as Exhibit B.

29. The discovery requests contained in Melanson’s First and Second Requests sought to uncover information and documents that were indisputably material to the controversy at issue in the arbitration.

30. In particular, Melanson’s document requests sought the production of materials concerning Credit Suisse’s decision to exit the retail brokerage market and sell its U.S. Wealth Management business to Wells Fargo, see First Request, Document Request Nos. 8, 12, 27-29; Second Request, Document Request No. 31, its communications with clients regarding “the status and/or future” of its retail brokerage business in 2015, see First Request, Document Request No. 21, communications with Wells Fargo concerning the sale of the business and the movement of advisors and/or clients from Credit Suisse to Wells Fargo, see First Request, Document Request Nos. 10, 13, 15; Second Request, Document Request No. 30, any payments Credit Suisse received from Wells Fargo in connection with the sale or the right to recruit advisors, see First Request, Document Request Nos. 11, 25-26, and its decisions with respect to the repayment of loans from former advisors, like Melanson, who were left without a job after

Credit Suisse opted to close its retail brokerage business in or about 2015, see First Request, Document Request Nos. 14, 16; Second Request, Document Request Nos. 32-33.

31. Melanson's requests for information sought answers concerning the exact same subjects, including the identities of anyone with knowledge of Credit Suisse's decision to exit the U.S. retail brokerage market, see First Request, Information Request No. 1, the identity of the appropriate individual from Credit Suisse with knowledge of the terms of the agreement between Credit Suisse and Wells Fargo concerning the movement of brokers and accounts in 2015 and 2016, see Second Request, Information Request No. 6, and information concerning the consideration Credit Suisse received in connection with the movement of brokers to Wells Fargo in 2015 and 2016, see Second Request, Information Request No. 7.

32. All of these requests were integral to Melanson's defenses, in that they were expected to disprove Credit Suisse's allegation in its Statement of Claim that he "voluntarily resigned his employment with Credit Suisse without any notice to join Wells Fargo" and that they had not been paid on the Note.

33. If proven to be true, Melanson's claims would have defeated those brought by Credit Suisse in the arbitration.

34. Despite the unquestionable relevancy of Melanson's discovery requests, Credit Suisse stonewalled his defense by refusing to turn over these relevant documents and information.

35. Melanson accordingly moved to compel production on May 24, 2021. A true and accurate copy of the Motion to Compel is attached hereto as Exhibit C.



36. The Chairperson denied Melanson's Motion to Compel on June 16, 2021. As a result, Melanson never obtained the evidence he needed to prove Credit Suisse's breach and lack of damages at the hearing.

37. G. L. c. 251, § 12 provides that an arbitration award shall be vacated if "the arbitrators . . . refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of [G. L. c. 251, § 5], as to prejudice substantially the rights of a party."

38. G. L. c. 251, § 5(b) provides that parties to an arbitration proceeding "shall have the right to be heard" and "to present evidence material to the controversy."

39. Here, the evidence in question was and is in the sole possession of Credit Suisse.

40. Once the Arbitrators denied Melanson's Motion to Compel the production of that material evidence, it became literally impossible for him to introduce it in the arbitration.

41. At all times, Melanson maintained his position that this evidence was material and indeed critical to a full and fair resolution of the controversy underlying the arbitration, see Melanson's Amended Statement of Answer, attached hereto as Exhibit D, and Melanson's Prehearing Brief, attached hereto as Exhibit E, but he was denied the opportunity to provide it.

42. Melanson's rights were substantially prejudiced by the Arbitrators' refusal to hear this material evidence. As a result, the arbitration award must be vacated.

**WHEREFORE**, Defendant and Plaintiff-in-Counterclaim Keith Melanson respectfully requests that Plaintiff and Defendant-in-Counterclaim Credit Suisse Securities (USA), LLC's Application to Confirm Arbitration Award be dismissed, with prejudice, and that the Court vacate the Arbitration Award and issue such other relief in Melanson's favor as this Court deems equitable and just.

KEITH MELANSON  
By His Attorneys,

/s/ Louis M. Ciavarra

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Date: November 24, 2021

CERTIFICATE OF SERVICE

I, Louis M. Ciavarra, hereby certify that I have served a copy of the foregoing on the following by electronic mail, this 24<sup>th</sup> day of November 2021, to:

James W. Bucking, Esquire  
James S. Fullmer, Esquire  
Foley Hoag LLP  
Seaport West  
155 Seaport Boulevard  
Boston, MA 02210-2600

/s/ Louis M. Ciavarra

Louis M. Ciavarra