Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

<u>Claimant</u> Stephens Inc.	<u>Case Number</u>: 17-02378
vs.	
<u>Respondents</u> Benjamin F. Edwards & Company, Inc. Benjamin F. Edwards, IV Brian Todd Erwin Timothy Garry Fitzgerald Jeffrey Lynn Green Malcolm Andy Peeler	<u>Hearing Site</u>: Memphis, Tennessee

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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. Member and Associated Persons

The evidentiary hearing was conducted partially by videoconference.

REPRESENTATION OF PARTIES

For Claimant Stephens Inc. ("Claimant"): Daniel H. Wirth, Esq. and Joseph B. Alonso, Esq., Gregory, Doyle, Calhoun & Rogers, LLC, Marietta, Georgia.

For Respondents Benjamin F. Edwards & Company, Inc. ("BFE"), Benjamin F. Edwards, IV ("Edwards"), Brian Todd Erwin ("Erwin"), Timothy Garry Fitzgerald ("Fitzgerald"), Jeffrey Lynn Green ("Green"), and Malcolm Andy Peeler ("Peeler"): Eric D. Martin, Esq. and Jeff Kalinowski, Esq., Bryan Cave Leighton Paisner LLP, St. Louis, Missouri.

Hereinafter, BFE, Edwards, Erwin, Fitzgerald, Green, and Peeler are collectively referred to as "Respondents".

CASE INFORMATION

Statement of Claim filed on or about: September 1, 2017.
Reply to Respondents' Counterclaim filed on or about: December 14, 2017.
Claimant signed the Submission Agreement: August 31, 2017.

Statement of Answer and Counterclaim filed by Respondents on or about: November 24, 2017.

BFE signed the Submission Agreement: November 13, 2017.
Edwards signed the Submission Agreement: November 8, 2017.
Erwin signed the Submission Agreement: November 6, 2017.
Fitzgerald signed the Submission Agreement: November 3, 2017.
Green signed the Submission Agreement: November 8, 2017.
Peeler signed the Submission Agreement: November 3, 2017.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action:
1. Raiding against BFE and Edwards;
2. Breach of contract against Peeler, Erwin, Green and Fitzgerald;
3. Tortious interference with economic advantage, contractual and business relations against BFE and Edwards;
4. Breach of fiduciary duty/duty of loyalty against Peeler, Erwin, Green and Fitzgerald;
5. Inducement of breach of fiduciary duty/duty of loyalty against BFE and Edwards;
6. Business slander and libel against BFE, Green and Fitzgerald;
7. Conspiracy against all Respondents;
8. Unfair competition against all Respondents;
9. Unjust enrichment against Peeler, Erwin, Green and Fitzgerald;
10. Conversion/misappropriation of confidential information and trade secrets against all Respondents; and
11. Violation of the Protocol for Broker Recruiting (“Broker Protocol”) against BFE.

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

In the Counterclaim, Respondents asserted a cause of action for violation of the Broker Protocol.

In its Reply to Respondents’ 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 in an amount to be determined at the hearing;
2. Punitive damages in an amount to be determined by the Panel;
3. Attorneys’ fees and costs; and
4. Any other relief the Panel deems just and equitable under the circumstances.

In the Statement of Answer, Respondents requested:
1. The Statement of Claim be dismissed with prejudice;
2. Attorneys’ fees and costs incurred in this matter; and
3. Such other and further relief as the Panel deems just and proper under the circumstances.

In the Counterclaim, Respondents requested:
1. Compensatory damages in an amount to be determined at the hearing;
2. Reimbursement for attorneys’ fees and costs; and

3. Such other and further relief as the Panel deems just and proper under the circumstances.

In its Reply to Respondents' Counterclaim, Claimant requested:
1. The Counterclaim filed by Respondents be denied in its entirety;
2. All costs be assessed against Respondents;
3. Attorneys' fees and costs as determined by the Panel in connection with the Counterclaim;
4. Compensatory and punitive damages in an amount to be determined at the hearing;
5. Attorneys' fees; and
6. Such other and further relief as the Panel deems reasonable and appropriate under the circumstances.

In Claimant's post-hearing brief, Claimant requested the following damages:
1. Lost profits in the amount of $10,970,000.00;
2. Attorneys' fees and expenses in the amount of $2,205,373.00; and
3. Punitive damages in the amount of $10,970,000.00.

In Respondents' post-hearing brief, Respondents requested damages in the amount of $2,552,718.30 for their Counterclaim.

OTHER ISSUES CONSIDERED AND DECIDED

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

On March 22, 2019, Claimant filed a Motion for Sanctions against Respondents. On April 1, 2019, Respondents filed an opposition to the Motion for Sanctions. On April 8, 2019, Claimant filed a reply in support of its Motion for Sanctions. On May 20, 2019, the Panel heard oral arguments on the motion. On May 28, 2019, the Panel granted Claimant's Motion for Sanctions and ordered Respondents to (1) satisfy all discovery requests and certify as to their completeness and accuracy, and (2) pay the discretionary costs of Claimant's Motion for Sanctions including attorneys' fees for preparation and hearing time.

On July 19, 2019, Claimant filed a Second Motion for Sanctions against Respondents, which included Claimant's request to enter a default judgment. On July 29, 2019, Respondents filed an opposition to the Second Motion for Sanctions. On September 17, 2019 Claimant filed a reply in support of its motion. On September 23, 2019, Respondents filed a sur-reply to Claimant's Second Motion for Sanctions. On September 25, 2019, the Panel heard oral arguments on Claimant's Second Motion for Sanctions. By an Order dated October 10, 2019, the Panel inferred that the destroyed material that was the subject of the Second Motion for Sanctions was relevant, admissible evidence and that the evidence was unfavorable to the parties involved in the destruction of such evidence, and granted Claimant's motion, ordering Respondents to be jointly and severally liable for Claimant's legal expenses associated with Claimant's Second Motion for Sanctions and the depositions that were taken. In the order, the Panel denied Claimant's request for an entry of a default judgment or to disallow the answer filed in this case.

The Panel 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.

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

FINDINGS

I. Claimant's Causes of Action

Count 1: Raiding Against BFE and Edwards

There were six brokerage firms in Jonesboro, Arkansas at the beginning of 2016. Claimant had a branch in Jonesboro with six financial advisors at that time. They were Charles Long ("Long"), John Gay ("Gay"), Peeler, Erwin, Green, and Fitzgerald. Peeler, Erwin, Green, and Fitzgerald left Claimant for BFE within an 11-month period over 2016-17. All claims brought before the Panel pertain to the actions of BFE, Edwards and the four former financial advisors (or "FAs") of Claimant: Peeler, Erwin, Green and Fitzgerald.

There are differing definitions of "employee raiding". Experts from both parties agreed that the Rittenhouse Conference report ("Rittenhouse Report"), released on September 10, 2003, generated a reasonable definition. Eighteen of thirty-seven experts found that all three factors below are necessary to establish a claim for raiding. Nine of thirty-seven found that only factor one was necessary. Nine of thirty-seven found that only the first two factors were necessary:

1. Severe economic harm to the business unit;
2. Predatory intent (malice or implied by the extent of hiring); and
3. Improper means (inducing breach of fiduciary duty, breach of contract, revelation of trade secrets).

The Rittenhouse Conference further reached agreement that "creeping raids" occur and that an arbitrary departure-to-departure time standard is not appropriate. If the departures stem from a single plan, they should be considered as one event regardless of timing. Both parties' experts agreed with this principle as well.

The Panel finds that BFE and Edwards, individually, are liable for raiding employees from Claimant:

1. There is severe economic harm. Claimant's Jonesboro branch has remained in business, but there are lost profits. The lost production of the four FAs and sales assistants was well over 50% of annual production.

2. There is predatory intent. Malice requires:
    a. The intent to commit an unlawful act without justification or excuse; or
    b. An improper motive for an action, such as desire to cause injury to another.

    BFE and Edwards clearly expressed an intent to commit an act not allowed within the financial industry. Multiple e-mails and texts evidenced that BFE employees, including Edwards, intended to hire the four FAs in violation of their own definition of raiding. Also, the four FAs, in their testimony, all defined raiding as taking more than 50% of a firm's production. They all agreed that taking all four FAs was improper. They simply disagreed that it was one continuous plan. Further, it should be noted that Arkansas law interprets reckless disregard can be interpreted as actual malice. *Roeder v. United States*, 2014 Ark. 156 (Ark. SupCt 2014).

Even if malice were not present, predatory intent is established. The extent of the hiring confirms this. BFE hired away six of nine of Claimant's Jonesboro employees and well over 50% of that office's annual production.

3. There is an improper means. BFE and Edwards induced Peeler and Erwin to breach their contract provisions regarding recruitment of Claimant's employees. They also induced Peeler and Erwin to breach their duty of loyalty to Claimant during their employment there.

There was extensive evidence that BFE's recruiting efforts were part of a single hiring plan. BFE recruited all the FAs in Claimant's Jonesboro, Arkansas office. BFE quickly streamlined those efforts to the four FAs named in this arbitration and Long. Efforts to recruit Gay were nixed by Gay's early and clear expression of disinterest. Roger Buller ("Buller"), a BFE employee, enlisted Peeler's assistance early in the recruitment process. Peeler responded with energetic and sustained effort to recruit the other three financial advisors and Claimant's financial advisors from other locations. He also helped recruit financial advisors from the Wells Fargo office in Jonesboro. Peeler and Erwin continued to provide advice to BFE recruiters throughout the process. The employment offer made by BFE to Peeler and Erwin was conditioned upon the recruitment of Fitzgerald and Green. Peeler, Fitzgerald and Green all agreed that they could not move together at one time, as that would be raiding.

Peeler's behavior was especially egregious before and after his departure from Claimant. He consistently, flagrantly violated any duty of loyalty to Claimant, breached his contract, and aided an outside firm in their raiding efforts. At one point, Buller expressed his concern that Peeler's recruiting actions could "blow his cover".

Peeler, Fitzgerald, and Pete Murphy, another local financial advisor, owned property that BFE was interested in leasing to house a large branch office. These individuals, anticipating a large move of financial advisors, gave notice to the current occupant of the property, Wells Fargo, that they would have to leave the building. When BFE was unable to secure the large number of financial advisors it had intended, it passed on leasing the property. BFE then agreed to rent Erwin's office space in Jonesboro as a "pitstop" on their way to a larger office, staffed with more financial advisors from Claimant and other brokerage firms. Days before Peeler and Erwin left Claimant, Fitzgerald inquired of Peeler if there would be office space to accommodate Fitzgerald and Green.

Fitzgerald inquired about becoming the branch manager for the new Jonesboro BFE branch. Thereafter, BFE included such position in its financial package to lure Fitzgerald. Fitzgerald and Peeler discussed Fitzgerald's desire to attain quarterly bonuses and loan forgiveness prior to leaving Claimant. There are no recorded communications that indicate Fitzgerald and Green ever altered their intent to leave Claimant as a group with Peeler and Erwin.

The Panel unanimously held that sanctions were appropriate for the destruction of e-mails and texts by various Respondents. We infer that the destroyed material was relevant, admissible evidence and that the evidence was unfavorable to Respondents. Peeler and Fitzgerald destroyed a large number of text messages between themselves during the period following

Peeler and Erwin's exit from Claimant. There were also many texts to/from other individuals involved in the recruitment process, including Buller, Martin Altenberger ("Altenberger") and Edwards. These missing communications strengthen the evidence of raiding.

Respondents submit that Fitzgerald and Green left the firm largely because of their dissatisfaction with Claimant's response to proposed changes in the Department of Labor ("DOL") Rule for certain retirement accounts. An analysis of the testimony reveals this to be untrue. Further, Fitzgerald and Green violated their clients' best interest in their actions shortly before leaving Claimant. Expert testimony showed that the financial advisors violated several FINRA rules. These included a failure to advise in their client's best interest and a failure to maintain confidential information.

Claimant offered clients a choice of three types of accounts in response to the proposed changes in the DOL Rule. Clients could choose a $100.00 fee, a flat fee for up to ten transactions, or a one percent (1%) fee based on total assets. BFE received knowledge of Claimant's DOL Rule policy through Claimant's financial advisors.

Fitzgerald and, particularly, Green had a large percentage of accounts affected by Claimant's new DOL Rule policy. Fitzgerald and Green did make account type designations in response to Claimant's new DOL Rule policy, which increased fees to their clients and increased income to Fitzgerald and Green. These designations were made shortly after Fitzgerald and Green made commitments to BFE. Claimant's use of "negative consent" letters to these clients (i.e., if the clients did not respond, the financial advisor would make the decision on their behalf) does not absolve financial advisors of the duty to act in the best interest of their clients. Clearly, accounts with zero to few annual transactions were shifted to a higher fee-based account that did not benefit their clients.

Other BFE financial advisors did not make the same wholesale changes in account types which resulted in increased income to the financial advisors. These changes came shortly before they left Claimant for BFE and did significantly affect their trailing twelve compensation numbers.

Claimant refunded money to the clients of Fitzgerald and Green for increased DOL account fees that Claimant felt were not done in the clients' best interest. The brief delay in Claimant's awareness of the increased fees does not indicate Claimant knew and ignored the fee increases as implied by Respondents.

Respondents attempt a "good faith" argument in defense of their actions. Ostensibly, Respondents argue that Claimant's recruitment of Wachovia financial advisors in 2008 prohibits Claimant from making a raiding argument in this case. The past recruiting of either Claimant or BFE is not at issue in this matter and does not alter the elements of offense to be applied here. Also, the Wachovia recruitment did not involve written contracts, promises not to solicit, and Wachovia, given the unusual circumstances of the time, did encourage their financial advisors to consider changing employment if they were not happy at Wachovia. Further, Claimant's actions in that recruitment do not indicate a differing standard for raiding which should be considered here.

Claimant has suffered two different kinds of harm: (1) lost net profits, as a result of Respondents' wrongdoing, and (2) the lost business that was no longer available to help defray Claimant's fixed costs of doing business.

Damages can and should be determined by the profit lost by Claimant. Claimant's damages expert presented a detailed set of exhibits to show those losses. There is little to dispute as to the validity of those numbers presented.

Respondents argue that Claimant continues to have strong viable profits. The branch may be "viable" and yet have suffered harm. A total elimination of the Jonesboro branch is not a condition precedent to any damages argument and is unfounded. Rather, the total profit lost due to the illegal actions of Respondents is the proper calculation of damages. Claimant's damages expert presented what can be considered a conservative estimate of the financial harm to Claimant. The damages expert's estimate on the length of years necessary to rebuild the branch was reasonable.

Punitive damages are appropriate. The harm was not achieved by a mere accident. When the "defendant knew or should have known that, in light of surrounding circumstances, its conduct would naturally and probably result in injury and that it continued the conduct in reckless disregard of the circumstances, from which malice may be inferred". *Holiday Inn Franchising, Inc v. Hotel Associates, Inc*. 2011 Ark. App. 147, at 16. An award of attorney fees is also appropriate.

Count 2: Breach of Contract Against Peeler, Erwin, Green and Fitzgerald

Public policy favors competition. "Covenants not to compete in employment contracts are subject to stricter scrutiny than those connected with a sale of a business." See *Hyde v. C M Vending Co.*, 288 Ark. 218, 703 S.W.2d 862 (1986). "The burden is on the party challenging the validity of a covenant to show that it is unreasonable and contrary to public policy." See *Madison Bank and Trust v. First Nat'l Bank*, 276 Ark. 405, 635 S.W.2d 268 (1982).

The restrictive covenants contained in the employment contracts were not covenants not to compete. Claimant has entered into the Broker Protocol which acknowledges that financial advisors will change brokerage firms and establishes a "protocol" for those moves.

The restrictive covenants at issue are non-solicit covenants. There is no Arkansas or federal law that a non-solicit agreement is invalid for Claimant's former financial advisors in Jonesboro, Arkansas. As such, we must consider the contract provision to be valid. We are not the proper forum to make new declarations as to what contract provisions are valid within state and federal law.

The non-solicit covenants are not unreasonable or contrary to public policy. Claimant had a valid interest in protecting the information at issue. Claimant provided special training and made available trade secrets, confidential business information, and customer lists. Most state employment law require restrictive covenants in employment contracts that are restricted by geography, time, or field of work. A geographic area would have included the Jonesboro area. A one-year time restriction is not unreasonable. The field of work was the same for the financial advisors in their new employment at BFE.

The non-solicitation covenant is enforceable. The personal relationships by and between Peeler, Erwin, Green and Fitzgerald do not excuse them from the obligation in their contracts not to solicit Claimant's employees for one year following the termination of their employment.

Respondents' argument that the covenant prohibits fair competition or is overly broad is without merit. The covenant is a sensible attempt by Claimant to prevent large employee defections due to solicitation from Claimant's former employees with a naturally close working relationship to Claimant's current employees. The time limit is reasonable. Peeler and Erwin violated the non-solicit agreement condition of their contracts. They participated in outside recruitment of financial advisors Green and Fitzgerald as well sales associates, Gay and Long.

Peeler, Erwin, Green and Fitzgerald received signed account transfer forms in a very fast manner. Broker-2-Broker does speed up the process by generation of forms, however it does not speed up the reaction time of investors. A Wells Fargo Jonesboro branch financial advisor testified that a mutual client received and signed transfer forms prior to Green's departure date. Green testified that this client was elderly and confused. Expert testimony indicated it was nigh impossible to achieve the turnaround rates that occurred in this case.

Peeler, Erwin, Green and Fitzgerald agreed in their respective contracts to pay "all costs, court costs, fees and expenses, including actual attorney fees, incurred to enforce this Agreement." An award of joint and severable liability against Peeler and Erwin is appropriate.

Count 3: Tortious Interference with Economic Advantage, Contractual and Business Relations Against BFE and Edwards

"To prove tortious interference under Arkansas law, C.A.G. must prove the following elements: (1) the existence of a valid contractual relationship or a business expectancy; (2) knowledge of the relationship or expectancy on the part of the interfering party; (3) intentional interference inducing or causing a breach or termination of the relationship or expectancy; and (4) resultant damage to the party whose relationship or expectancy has been disrupted. See, e.g., *K.C. Props. of N.W. Ark., Inc. v. Lowell Inv. Partners, LLC*, 373 Ark. 14, 26, 280 S.W.3d 1, 11 (2008). This court also requires that the defendant's conduct be at least "improper" for a valid tortious-interference claim." *Crockett v. C.A.G. Invs., Inc.*, 2010 Ark. 90, at page 9.

BFE was provided with a copy of the contracts in question and continued to encourage the financial advisors to break those contracts. Edwards was actively involved in the recruiting, was aware of the danger of raiding in this instance, and continued to push for large scale hires of Claimant's Jonesboro employees. It is difficult to conceive a scenario in which any or all of the Respondents would be unaware of the harm their actions would cause to Claimant. Despite their knowledge of the potential damage to Claimant, they continued in their efforts unabated.

Count 4: Breach of Fiduciary Duty/Duty of Loyalty Against Peeler, Erwin, Green and Fitzgerald

"Breach of fiduciary duty involves betrayal of a trust and benefit by a dominant party at the expense of one under his or her influence. *Cole v. Laws*, 349 Ark. 177, 76 S.W.3d 878, cert. denied, 537 U.S. 1003, 123 S. Ct. 509, 154 L. Ed. 2d 400 (2002). A person standing in a fiduciary relationship with another is subject to liability to the other for harm resulting from a breach of the duty imposed by the relationship. *Long v. Lampton*, 324 Ark. 511, 922 S.W.2d 692 (1996). Regardless of the express terms of an agreement, a fiduciary may be held liable for conduct that does not meet the requisite standards of fair dealing, good faith, honesty, and loyalty. *Sexton Law Firm, P.A. v. Milligan*, 329 Ark. 285, 948 S.W.2d 388 (1997). The guiding principle of the fiduciary relationship is that self-dealing, absent the consent of the other party to the relationship, is strictly proscribed. Id." *Ark. Dev. Fin. Auth. v. Wiley*, 2020 Ark. 395, pages 5-6.

It is not in dispute that an employee owes a duty of loyalty to an employer which precludes the employee from soliciting other employees or customers to leave the employer. It is also not in dispute that a company officer owes a higher fiduciary duty to the company not to financially harm the company. The financial advisors in this case, however, were not vice presidents of Claimant in any manner other than title only.

The Common Law Unclean Hands Doctrine does not apply to a non-contract claim. Respondents' Wachovia recruitment defense is not appropriate. Further, if Wachovia felt aggrieved in Claimant's prior recruitment of these financial advisors, they could have brought suit at the time. It is a separate claim involving separate parties to be adjudicated separately. It should not be considered here.

Claimant admits that this duty is based on a higher standard of conduct for officers of a corporation. The parties to this action disagreed about whether the financial advisors' vice president titles were "titles in name only" or actually imposed an officer's fiduciary duty. Testimony revealed that the actual duties for the financial advisors involved in this matter were unchanged upon being named a vice president of Claimant.

A financial advisor's duty of loyalty remains, regardless of whether an employee is an officer of the business. Certainly, there is no dispute that none of the four financial advisors aided in recruitment of non-Claimant financial advisors to Claimant from the beginning of 2016 until they left the firm. It can be said, however, based on testimony received, that they aided in the recruitment of non-Claimant financial advisors to BFE.

There were two separate forged signatures on Green's ACAT transfer forms. Hearsay evidence was admitted by Stacy Harrell, a financial advisor in Jonesboro, that mutual clients had informed her that they had received ACAT transfer forms prior to his actual exit date from Claimant. A breach of loyalty occurred, but not a breach of an officer's fiduciary duty.

<u>Count 5: Inducement of Breach of Fiduciary Duty/Duty of Loyalty Against BFE and Edwards</u>

To the extent that a fiduciary duty would have existed for the four financial advisors, it is clear that Edwards, Buller and other employees of BFE encouraged those financial advisors to breach that duty. There was no officer's fiduciary duty, though.

<u>Count 6: Business Slander and Libel Against BFE, Green and Fitzgerald</u>

"A viable action for defamation turns on whether the communication or publication tends or is reasonably calculated to cause harm to another's reputation. *Dodson v. Allstate Ins. Co.*, 345 Ark. 430, 47 S.W.3d 866 (2001); *Southall v. Little Rock Newspapers, Inc.*, 332 Ark. 123, 964 S.W.2d 187 (1998); *Thomson Newspaper Publishing Inc. v. Coody*, 320 Ark. 455, 896 S.W.2d 897 (1995). The following elements must be proved to support a claim of defamation, whether it be by the spoken word (slander) or the written word (libel): (1) the defamatory nature of the statement of fact; (2) that statement's identification of or reference to the plaintiff; (3) publication of the statement by the defendant; (4) the defendant's fault in the publication; (5) the statement's falsity; and (6) damages. *Dodson v. Allstate Ins. Co.*, supra; *Brown v. Tucker*, 330 Ark. 435, 954 S.W.2d 262 (1997); *Minor v. Failla*, 329 Ark. 274, 946 S.W.2d 954 (1997) (*citing Mitchell v. Globe Int'l Pub., Inc.*, 773 F. Supp. 1235 (W.D. Ark. 1991)).” *Faulkner v. Ark. Children's Hosp.*, 347 Ark. 941, at 956.

A defamatory statement is necessary for this claim. There is no evidence beyond Green’s testimonial admission that he advised 99% of his clients that Claimant had raised account fees. Yet, his choice of plans also greatly affected those fees. This is possibly prevarication, but he explains it as his interpretation of their action.

Claimant’s claim for defamation relies heavily on statements made by Green and Fitzgerald to their clients after they left Claimant. These statements came into evidence as hearsay evidence. If the statements were numerous and as described by Bill James (“James”), Claimant’s Regional Manager, they would be sufficient to show that Green and Fitzgerald made false statements with intent and were a proximate cause of damage. The evidence does not rise to this level of credibility and the claim is invalid.

Count 7: Conspiracy Against All Respondents

“To prove a civil conspiracy, a plaintiff must show that two or more persons have combined to accomplish a purpose that is unlawful or oppressive or to accomplish some purpose, not in itself unlawful, oppressive or immoral, but by unlawful, oppressive or immoral means, to the injury of another. *Chambers v. Stern*, 347 Ark. 395, 64 S.W.3d 737, (2002); *Dodson v. Allstate Ins. Co.*, 345 Ark. 430, 47 S.W.3d 866, (2001); *Mason v. Funderburk*, 247 Ark. 521, 446 S.W.2d 543 (1969). A civil conspiracy is not actionable in and of itself, but a recovery may be had for damages caused by acts committed pursuant to the conspiracy. *Chambers v. Stern*, supra; *Dodson v. Allstate Ins. Co.*, supra. A civil conspiracy is an intentional tort which requires a specific intent to accomplish the contemplated wrong. *Chambers v. Stern*, supra; *Dodson v. Allstate Ins. Co.*, supra.

In *Dodson v. Allstate Ins.*, supra, we noted that a corporation cannot conspire with itself, since that defeats the requirement of a combination of two or more persons acting to accomplish some unlawful or oppressive purpose. Thus, in order to sustain a claim for a civil conspiracy where agents of a corporation are involved, it is necessary to show that one or more of the agents acted outside of the scope of their employment, to render them a separate ‘person’ for purposes of the conspiracy. *Dodson*, 345 Ark. at 445, 47 S.W.3d at 876. In *Dodson* we said that corporate agents could ‘not be held liable for civil conspiracy in the absence of evidence showing that they were acting for their own personal benefit rather than for the benefit of the corporation.’ *Dodson*, 345 Ark. at 445, 47 S.W.3d at 876 (citations omitted).

As was the case with tortious interference, this point turns on whether the individual appellees were acting within the scope of their employment when they conspired as alleged in Faulkner's complaint. Again, we must look to the stated reasons for the actions taken by the individual appellees.” *Faulkner v. Ark. Children's Hosp.*, 347 Ark. 941, at 961-962.

Respondents engaged in an agreement and carried out an immoral or oppressive act that injured Claimant. This claim is granted.

Count 8: Unfair Competition Against All Respondents

This claim is largely subsumed by the other claims and is denied.

Count 9: Unjust Enrichment Against Peeler, Erwin, Green and Fitzgerald

A plaintiff has the burden of proving the following elements: (1) that the plaintiff provided the improvements to the property of the defendant, who received the benefit of them; (2) that the circumstances were such that the plaintiff reasonably expected to be paid the value of the improvements by the defendant; (3) that the defendant was aware the plaintiff was providing such improvements with the expectation of being paid and accepted the improvements; and (4) the reasonable value of the improvements received by the defendant. *Derrick v. Derrick*, 2015 Ark. App. 696, 477 S.W. 3d 577.

This claim is denied.

Count 10: Conversion/Misappropriation of Confidential Information and Trade Secrets Against All Respondents

"Conversion is a common-law tort action for the wrongful possession or disposition of another's property; to establish liability for the tort of conversion, a plaintiff must prove that the defendant wrongfully committed a distinct act of dominion over the property of another, which is a denial of, or is inconsistent with, the owner's rights. *Hatchell v. Wren*, 363 Ark. 107, 116-17, 211 S.W.3d 516, 521 (2005). Conscious wrongdoing is not the requisite intent for 15 conversion; what is required is the intent to exercise control or dominion over goods. *Car Transp. v. Garden Spot Distrib.*, 305 Ark. 82, 88, 805 S.W.2d 632, 635 (1991). Unlike some jurisdictions, Arkansas does not require that the owner or person entitled to possession be completely deprived of their property in order for a conversion to occur. Rather, conversion occurs if the defendant exercises dominion over property in violation of, or in a way that is in denial of or inconsistent with, the rights of the owner or person entitled to possession." *Integrated Direct Mktg., LLC v. Drew May & Merkle, Inc.*, 2016 Ark. 281, at pages 3-4.

Arkansas has a Theft of Trade Secrets Act, Ark. Code Ann. § 4-75-601 et seq., and there is a common law doctrine that protects an employer's confidential business information.

There were two separate forged signatures on Green's ACAT transfer forms. Hearsay evidence was admitted by Stacy Harrell, a financial advisor in Jonesboro, that mutual clients had informed her that they had received ACAT transfer forms prior to his actual exit date from Claimant which also shows the use of account information not permitted under the Protocol. The rapid transfer of accounts indicates the financial advisors contacted clients prior to leaving and expert testimony confirms the high likelihood. The financial advisors were also favored confidential information from a sales associate at Claimant to achieve the quick transfer of accounts. This claim is granted against all Respondents.

Count 11: Violation of the Broker Protocol Against BFE

The Broker Protocol acts a contract binding all signature firms. Both Claimant and BFE are signature firms. As such, they are contractually bound by the terms therein. Those terms have specific requirements for movement of financial advisors from one firm to another. There are no written remedies for a breach of the Broker Protocol.

The speed of the transfer form (ACAT) responses lends great suspicion that Peeler, Erwin, Green and Fitzgerald acted prior to their departure dates. The Broker-2-Broker system is an obvious aid in the process, but does not wholly explain the remarkable turnaround time of the ACAT forms. Peeler, Erwin, Green and Fitzgerald coordinated with financial assistant Stacy while she was still at Claimant and she helped them coordinate the transfer by sending confidential Claimant information. Once again, expert testimony indicated it was nigh impossible to achieve the turnaround rates that occurred in this case without such assistance.

BFE, Peeler, Erwin, Green and Fitzgerald violated the Broker Protocol.

Damages

Compensatory damages of $10,970,000.00 are awarded to Claimant. BFE, Edwards, Peeler, Erwin, Green and Fitzgerald are liable for these damages, jointly and severally.

Punitive damages of $5,000,000.00 are awarded to Claimant. BFE is liable for punitive damages of $2,000,000.00. Edwards is liable for punitive damages of $2,000,000.00. Peeler is liable for punitive damages of $1,000,000.00.

Attorney fees and litigation expenses of $2,205,373.00 are awarded to Claimant. BFE, Edwards, Peeler, Erwin, Green, and Fitzgerald are liable for these damages, jointly and severally.

II. Counterclaim

Count 1: Violation of Broker Protocol Against Claimant

There was no evidence of a breach of the Broker Protocol by Claimant. The claim is without merit.

AWARD

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

1. Respondents are jointly and severally liable for and shall pay to Claimant the sum of $10,970,000.00 in compensatory damages.

2. BFE is liable for and shall pay to Claimant the sum of $2,000,000.00 in punitive damages pursuant to *Holiday Inn Franchising, Inc. v. Hotel Associates, Inc.*, 2011 Ark. App. 147 at 16.

3. Edwards is liable for and shall pay to Claimant the sum of $2,000,000.00 in punitive damages pursuant to *Holiday Inn Franchising, Inc. v. Hotel Associates, Inc.*, 2011 Ark. App. 147 at 16.

4. Peeler is liable for and shall pay to Claimant the sum of $1,000,000.00 in punitive damages pursuant to *Holiday Inn Franchising, Inc. v. Hotel Associates, Inc.*, 2011 Ark. App. 147 at 16.

5. Respondents are jointly and severally liable for and shall pay to Claimant the sum of $2,205,373.00 in attorneys' fees pursuant to *Holiday Inn Franchising, Inc. v. Hotel Associates, Inc.*, 2011 Ark. App. 147 at 16.

6. Respondents' Counterclaim is denied.

7. Any and all claims for relief not specifically addressed herein are denied.

DISSENT

Introduction

Claimant's claim and its pre-hearing submissions alleged a ruthless "creeping raid' of Claimant's Jonesboro, Arkansas branch office by Respondents, breaches of contracts, breaches of fiduciary duties, tortious interference with contractual and prospective business relationships, business libel and slander, conspiracy, unfair competition, unjust enrichment, conversion of confidential information and violation of the protocol. Claimant's theory also alleged that BFE and Edwards maliciously hired more than 60% of Claimant's Jonesboro branch office production, by hiring four of six financial advisors, in an attempt to destroy Claimant's business, and that the Respondents attempted to destroy Claimant's good name, and its reputation. However, I find that most of Claimant's contentions were based on unreliable evidence, speculation and conjecture, and that a review of the hearing testimony and exhibits, revealed financial advisors who terminated their employment with Claimant and went to work for BFE based on real or perceived best self-interest and better working conditions. Accordingly, for the reasons set forth herein, I dissent.

Count 1: Raiding Against BFE and Edwards

I find that Claimant failed to prove Count 1 of its claim, Raiding. Claimant's theory of its raiding claim was that there was a single, agreed upon plan between Respondents, BFE, Edwards, and the four former financial advisors of Claimant, Peeler, Erwin, Fitzgerald and Green ("Respondent FAs"), to leave Claimant in May 2016, and that these parties structured the Respondent FAs departures from Claimant eleven months apart to avoid a raiding claim. Claimant further contended this was a "creeping raid."

There is no FINRA Rule, SEC rule, or case law that clearly defines raiding. Testimony about what constitutes raiding varied somewhat among witnesses; however, witnesses generally testified that raiding occurs when one firm maliciously hires away 30% to 50% of another firm's production. The two industry standards experts, John Maine ("Maine") and John West ("West"), both testified regarding the "working" definition of raiding discussed in Hearing Exhibit C547, the Rittenhouse Report. The majority of the Rittenhouse Conference participants defined raiding as "a compensable ***hiring*** of producers in a definable business unit of one firm by a competing firm." *(Emphasis added)*. Applying factors discussed at Rittenhouse Conference, a raiding claim is established by proof of the following:

1. Severe economic impact (a majority of the conference participants found 40% of production meets this element);
2. Malice/predation; and
3. Improper means (approximately half of the conference participants believed a raiding claim requires both).

The Rittenhouse Conference participants also agreed that departures over time can be considered as one event, and suggested consideration of the following when determining if a "creeping raid"' has occurred:

a. Whether the successive departures stem from a single plan;
b. The temporal proximity of the departures (as a general rule a gap in departures of more than 90 days should lead them to be viewed as presumptively unrelated, while a gap of less than 30 days should lead them to be viewed as presumptively related);
c. The relationships between the brokers whose departures are being evaluated (where the relationship suggests a natural desire to follow rather than a pre- determined plan, they may be treated as separate (Apx., 4).

Peeler and Erwin committed to joining BFE on or about May 24, 2016, and resigned from Claimant on September 6, 2016, for personal reasons. Since they were at-will employees, they had a right to leave. *(Hearing Exhibits C188, C256, C500, C474, R66, R130, R142)*. Fitzgerald and Green, who were also at-will employees, committed to joining BFE in May 2017, and resigned from Claimant on August 4, 2017. *(Hearing Exhibits C324, C327, C329, C330, C444, C479).* Claimant pointed out that Peeler's salesforce revealed when he was contacted by BFE in 2014, he was not interested in moving, and that this is one reason why Peeler's and Erwin's articulated reasons for their departures were pretextual. However, in Hearing Exhibit R66, Kevin Scanlon ("Scanlon"), Claimant's Director of PCG, stated Peeler was "malcontent" his entire time with Claimant. This document further revealed that, while Scanlon was surprised Erwin left, he expressed his opinion that Erwin's "key reason for leaving" was because Peeler left, and because Erwin hoped to receive Peeler's book of business when Peeler retired.[1]

Claimant contended that Green and Fitzgerald offered pretextual reasons for their decisions to leave Claimant. However, credible hearing testimony of Gay, Fitzgerald and Green, as well as the documentary evidence, in my opinion, confirmed their articulated reasons for terminating their employment with Claimant. For instance, Gay, Claimant's Jonesboro Branch Manager, testified that he did not see a problem with a FA's preference for commission-based business versus fee-based business. Gay testified that when Claimant's DOL fiduciary rule policy was announced, it caused a lot of contention and anxiety in the Jonesboro branch office. Gay said he was personally concerned because A shares broker fees were paid upfront and advisory broker fees were paid quarterly. Gay testified that Hearing Exhibit R22, an email from Ashley Palermo ("Palermo") to the PCG Group, dated April 28, 2016, represented a fundamental change in business, because Claimant was saying no more A shares or C shares, and everyone was paying attention to what was going on. Gay also testified that Palermo's email caused panic in the Jonesboro office. Moreover, Gay testified Green sent Hearing Exhibit R23, an email from Green to Scanlon, dated May 3, 2016, because "they all shut down" after Palermo's April 28,

[1] I acknowledge that I read the pleadings and other materials filed by the parties. The parties' pleadings, witnesses' testimony, and hearing exhibits were all considered in my conclusions set forth herein. However, I found the documentary evidence to be compelling, and fully reflected the communicators' states of mind as events were occurring.

2016 email; all FAs in the Jonesboro Branch were frustrated; and all of the Jonesboro FAs expressed their concerns to him. Additionally, Gay testified he did not think it was unreasonable for FAs to ask for information; unlike Scanlon, he did not think Green's email to Scanlon seeking information was unreasonable; and he encouraged Green to send this email. (*Hearing Exhibit R23*). Gay said they were waiting for Claimant's response to their concerns, and "they were looking at other firms." Gay acknowledged that the DOL fiduciary rule created a best interest contract rule ("BIC"); however, he stated the rule did not prohibit commission-based retirement (IRA/ERISA) accounts. Further, Gay testified there were some firms in the industry, other than BFE, that did not totally ban commission-based retirement accounts in response to the DOL fiduciary rule. Thus, although the DOL fiduciary rule created a BIC contract, commission-based accounts were not initially eliminated by the DOL fiduciary rule.

Fitzgerald and Green both gave unrebutted testimony that their books of business primarily consisted of IRA and ERISA accounts; they preferred commission-based accounts because, among other things, transactional broker fees were generally not charged to clients; and Claimant's new advisory fee-based platform would result in increased fees for their some of their clients, since the 1% SA fee increased as clients' investments grew. In addition, proof was presented showing PCG Director Scanlon and James, Claimant's PCG Regional Director, were aware that Fitzgerald, Green and Claimant's entire Jonesboro Branch FAs were upset and concerned about Claimant's DOL fiduciary rule policy. Scanlon, on the other hand, apparently did not think Claimant's DOL fiduciary rule policy was a big deal because, as shown in Hearing Exhibit 25, it only impacted about 9% of Claimant's assets and about 4% of Claimant's revenue. *(Hearing Exhibit R25; and Hearing Exhibits C11, C12, C169, C173, C174, C316, C317, C318, C370, C387, C393, C394, C398, C399, C404, C405, C406, C478, C479, C488, C531, R6, R19, R22, R23, R24, R29, R30, R31, R32, R34, R35, R37, R39, R40, R41, R42, R44, R45, R46, R48, R50, R51, R53, R54, R57, R58, R69, R60, R61, R62, R63, R66, R67, R68, R69, R70, R71, R76, R78, R79, R80, R88, R91, R97, R98, R99, R100, R101, R109, R111, R232, R323*).

Most of the hearing exhibits containing communication among the Respondent FAs, and communication between the Respondent FAs and BFE officials, revealed BFE's aggressive efforts to recruit Fitzgerald and Green. In fact, Buller, a BFE recruiter, testified to the effect when it comes to recruitment, no does not mean no. Many of these exhibits also revealed Peeler was providing BFE officials with information helpful to the recruitment of Fitzgerald, Green and other FAs.[2] (*Hearing Exhibits, C92, C103, C108, C121, C126, C138, C153, C156, C163, C161, C169, C156, C170, C171, C191, C207, C208, C209, C212, C220, C251, C256, C269, C282, C283, C284. C285, C313, C278, C307, C324, C325, C345, C369, C340, C370, C444, C457, C462, C474, C476, C477, C478, C493, C479, C494, C462, C499, C531)*.

However, these same hearing exhibits, as well as other exhibits not mentioned herein, also revealed the lack of a "single plan" and agreement between Edwards, BFE and the Respondent FAs, to join BFE in May 2016, and to stagger their departures. For instance, Hearing Exhibit C212, an email chain between BFE officials, Edwards, Tom Martin ("Martin") and Altenberger, definitively showed that BFE was recruiting Fitzgerald and Green and that, as of July 26, 2016, Peeler and Erwin were the only FAs committed to opening up BFE's new Jonesboro branch office. Also, Hearing Exhibit C284, an email between Peeler and Buller, sent following Trump's November 2016 election, revealed BFE's recruitment "momentum seems to have pause with

[2] In many instances, portions of exhibits were read into the record. I found reading the complete exhibit eliminated misleading impressions and placed the communication in the proper context.

Tim/Jeff and the WFA guys." This email further explained the momentum "paused" as to Fitzgerald because he believed the Trump administration would halt implementation of the DOL fiduciary rule, and it confirmed Fitzgerald had not yet committed to leaving Claimant as of November 2016. Additionally, Peeler, who was by this time working for BFE and was likely motivated to ensure the viability of BFE's Jonesboro branch office, told Buller that "Tim had indicated he'd like to talk again after Thanksgiving." Similarly, Hearing Exhibit C307, revealed that in March 2017, Fitzgerald told Buller that he was still exercising "due diligence" with regard to the DOL fiduciary rule, which included remaining at Claimant. Further, the nine-month gap between Peeler's and Erwin's departures from Claimant and Fitzgerald's and Green's decision to leave Claimant are, according to the Rittenhouse Report, presumptively unrelated. I find Claimant failed to rebut this presumption. The hearing exhibits and testimony also warrant a finding that the relationship between the Respondent FAs "suggests a natural desire to follow rather than a pre-determined plan." Consequently, I find that the Respondent FAs' departures from Claimant were separate, rather than part of a single plan.

Maine, Claimant's industry expert witness, explained away the contemporaneous emails showing Fitzgerald's and Green's communication with Claimant's officials about their disagreement with Claimant's implementation of the DOL fiduciary rule, by referring to himself as an "animal trainer" when he worked in the financial industry because he had to listen to FAs' constant complaints. Maine also gave inconsistent testimony regarding Claimant's raiding claim. Maine testified the Respondent FAs' departures were part of a single plan because the Respondent FAs and BFE reached an agreement in May 2016 that the Respondent FAs would all leave Claimant and join BFE. However, throughout his testimony, he testified that many of the emails and text messages showed Edwards and BFE engaged in inappropriate, aggressive recruitment. For example, Maine testified that Hearing Exhibit C264 showed Peeler was dripping on Fitzgerald, and he referred to BFE's recruitment efforts as a "drip campaign." He also testified Peeler was engaged in continued communication with friends but it "crossed the wall." In addition, Maine testified Hearing Exhibit C275 showed Peeler is involved in "recruiting," even after notice by Claimant that continued conversation would result in further action. If there was a "single plan" as claimed by Claimant, there would be no need for a "drip campaign."

Edwards and other BFE officials testified their motivation for BFE's "drip campaign" was to make the BFE Jonesboro office viable; BFE did not target Claimant's FAs; and BFE also recruited WFA and other FAs. I find the proof presented was consistent with his testimony. *(See, e.g., Hearing Exhibits C161,213, C439, C433, C443, C459, C460, C465)*. However, I agree with Maine's assessment that BFE engaged in aggressive recruiting to the point of reckless disregard to the effect the recruitment would have on Claimant. Yet, as previously stated, objectively reasonable proof was presented that Fitzgerald and Green did not terminate their employment with Claimant because of BFE's recruiting efforts. Rather, the testimony of the Respondent FAs, which is supported by the documentary evidence and the circumstances presented in this case, revealed: a) Peeler and Erwin terminated their employment with Claimant for personal reasons; b) Fitzgerald and Green made their own decisions to terminate their employment with Claimant because of Claimant's decision to totally eliminate commission-based retirement accounts; and c) BFE's response to the DOL fiduciary rule, while not completely defined in May 2017, was focused on providing flexibility and allowing both fee-based and commission-based retirement accounts. (*See Hearing Exhibit C283*).

There was much testimony and exhibits introduced about BFE acquiring office space in Jonesboro for "organic growth," and about hiring additional FAs in its new Jonesboro branch office. (*See, e.g., Hearing Exhibits C195, C220 C254, 274, 376, m3C417, C410, C427, C445, C448, C454, C473, C474).* Given BFE's aggressive recruiting efforts, use of the term "organic growth" and BFE's discussions of acquiring office space in Jonesboro to accommodate additional FAs, did not establish the "smoking gun" proof of raiding, as implied by Claimant, and did not establish Fitzgerald and Green committed to joining BFE prior to May 2017.[3] Moreover, I find that Peeler and BFE officials showed Fitzgerald and Green office space in connection with their recruitment efforts and that Peeler was employed by BFE when he showed them the office space. (*Hearing Exhibit C278, Fitzgerald and Green were shown office space on October 24, 2016; C324, Fitzgerald told Buller he assumed the real estate (office) was the one he was shown on Windover).* Moreover, I find that BFE offered Fitzgerald the opportunity to become branch manager of the new BFE Jonesboro branch office in connection with its "drip campaign." *(Hearing Exhibit 457).*

In sum, Claimant failed to show a single plan to hire the Respondent FAs existed or that BFE targeted Claimant's FAs. Hence, there was no "creeping raid." According to the Rittenhouse Report, severe economic harm occurs when "the hiring firm has hired so many of the producers of a competitor's business unit simultaneously or within a short period of time that the loss of the producers inflicts severe economic harm on the competitor's business unit." The facts presented did not support a finding that BFE caused Claimant to suffer severe economic harm, because the Respondent FAs were not hired simultaneously or within a short period of time. Moreover, Claimant failed to establish the second element of a raiding claim, malice/predation. As previously discussed, I find BFE's aggressive recruitment did not cause Fitzgerald and Green to terminate their employment with Claimant. To the contrary, the exhibits and testimony revealed they were unhappy, concerned, and frustrated about Claimant's response to the DOL fiduciary rule, which flip-flopped several times prior to April 2017, among other things. Many of the hearing exhibits showed Fitzgerald and Green expressed their objectively, verifiable and substantial reasons for their decisions to leave Claimant. Although Fitzgerald and Green explored leaving Claimant prior to their departures on August 4, 2017, the overwhelming proof showed Fitzgerald and Green did not make a decision to leave, and did not commit to join BFE, until after Claimant made a final decision about its implementation of the DOL fiduciary rule; they were told they could no longer conduct commissioned-based business; and they were forced to convert all of their accounts to fee-based accounts. Moreover, I find commission-based business, while more difficult to justify, was not totally eliminated by the DOL fiduciary rule when Fitzgerald and Green made the decision to leave Claimant, and Claimant's management officials made a business decision that drove these particular FAs to leave Claimant. For these reasons, I find Claimant failed to meet its burden of proof as to Count 1, Raiding.

Count 2: Breach of Contract Against Peeler, Erwin, Green and Fitzgerald

"Covenants not to compete in employment contracts are subject to stricter scrutiny than those connected with a sale of a business." *See Hyde v. C M Vending Co*., 288 Ark. 218, 703 S.W.2d 862 (1986). "The burden is on the party challenging the validity of a covenant to show that it is unreasonable and contrary to public policy." *See Madison Bank and Trust v. First National Bank*, 276 Ark. 405, 635 S.W.2d 268 (1982). The validity of a covenant is determined on a case-by-case basis and the restraints imposed must not be broader than necessary to "to afford a fair

[3] I also find it relevant that Peeler and Green had ownership interest in the property at 909 Windover, and A.G. Edwards occupied this building at one time. Thus, Peeler had a self-interest in leasing this location to BFE, his future employer. Buller and either Martin or Altenberger testified BFE never seriously considered leasing this location, because it had more square footage than BFE needed or desired for a start-up office.

protection to the interests of the party in whose favor it is given, and not so large as to interfere with the interests of the public." *Evans Labs., Inc. v. Melder*, 262 Ark. 868, 870, 562 S.W.2d 62, 63 (1978); *Statco Wireless, LLC v. Sw. Bell Wireless, LLC*, 80 Ark. App. 284, 298, 95 S.W.3d 13, 21 (2003). "If a covenant prohibits the covenantor from engaging in activities which are unnecessary to protect the promise, the covenant is unreasonable." *Statco* at 21. Moreover, a contract that serves merely to prohibit ordinary competition will not be enforced. *Foster Cable Services, Inc. v. Deville*, 368 F. Supp. 3d 1265 (W.D. Ark, 2019). Under Arkansas law, a valid breach-of-contract claim required Claimant to establish: (1) the existence of a valid and enforceable contract; (2) an obligation on the part of the defendant, (3) a breach of that obligation; and (4) damages resulting from the breach. *Rabalaias v. Barnett*, 284 Ark. 527, 528-29, 683 S.W.2d 919, 921 (Ark.1985).

Count 2 of Claimant's claim alleged that the Respondent FAs breached their contracts by soliciting Claimant's employees and by revealing confidential information. I find Claimant failed to establish a breach of contract claim as to Respondents Erwin, Fitzgerald and Green. However, I find Claimant met its burden of proof as to Peeler. The basis for my conclusions is as follows:

Claimant failed to introduce communication or action on the part of Erwin that showed he indirectly or directly sought to influence or solicit Claimant's employees. In its post hearing brief, Claimant pointed to Hearing Exhibits C126 and C134 as evidence that Erwin breached his duty of loyalty, breached his contract by soliciting employees, and engaged in unfair competition. These hearing exhibits reflected that Peeler told Erwin that he sent certain information to Buller, and Erwin commented that he "agrees with Cindy and Melissa," and that "John & Charles are going to be the tough ones in all of this." I find that Erwin's comments merely showed agreement with Peeler's statements and his thoughts about others who might leave Claimant and WFA. These comments, as well as Erwin's comments in Hearing Exhibit C129, do not reflect that Erwin actually directly or indirectly solicited, or attempted to influence Gay, Fitzgerald, Green, Long, or other Claimant employees, to terminate their employment with Claimant. Peeler later made statements to Erwin such as "I talked with Charles a bit today. He's not there yet." Hearing Exhibit 494 reveals that Erwin and Peeler held a meeting with "Pete and Jeremy," for 2.5 hours. However, Pete and Jeremy were not Claimant's employees. Claimant also contends that proof of Erwin's participation in improper solicitation of Claimant's employees included the fact that Peeler and Erwin attended an HOV at BFE and Erwin scheduled Fitzgerald's and Green's HOV. However, there was nothing inappropriate about Erwin going to an HOV at BFE, and, while the hearing exhibits showed Erwin agreed with Peeler's statements about the employment status of Claimant's employees mentioned in text messages and emails, Peeler's statements about his conduct are not attributable to Erwin.

During closing statements, Claimant pointed out the Respondent FAs, particularly Erwin and Peeler, deleted a large number of text messages between October 2016 and February 2017, which was prior to the filing of this arbitration, and requested the panel draw negative inferences from the FAs' destruction of these text messages. Claimant filed a pre-hearing motion seeking sanctions against Respondents, claiming Respondents' obligation to preserve evidence was triggered in 2016, and a pre-hearing order was issued awarding sanctions against Respondents. Yet, during the hearing of this matter, Claimant revealed it did not provide its employees with preservation notices until after this arbitration was filed in 2017, and in some instances provided preservation notices in 2018. *(See Exhibit R274)*. Since I find Claimant otherwise failed to meet its burden of proof that Erwin, Fitzgerald and Green sought to influence or solicited Claimant's employees to terminate their employment, fairness dictates an adverse inference should not be drawn finding the Respondent FAs text messages were deleted in bad faith to prevent the disclosure of adverse information. Moreover, Claimant's failure to provide preservation notices to some of its employees until well after this arbitration was filed in 2017, and Palermo's destruction of the master spreadsheet containing Claimant's FAs' comparison information, as well as any notes she may have created, also makes it unfair to apply the spoilation rule and draw a negative inference based on alleged discovery violations.[4]

As to Fitzgerald and Green, Claimant failed to establish the first element of a breach of contract claim with regards the solicitation of its employees - the existence of a valid and enforceable contract. Specifically, to the extent the non-solicitation contract clause of the Respondent FAs' contracts prohibited the Respondent FAs from expressing their unhappiness with management, concerns about the workplace environment, concerns about Claimant's operations and policies, concerns about Claimant's implementation of the DOL fiduciary rule, and their individual desire and/or intent to leave Claimant, with co-workers, with BFE officials, and with others, "during employee's employment with Stephens," it is overly broad, void, and unenforceable under the circumstances presented, because it violates the public policy of the State of Arkansas, which favors competition and unrestrained trade. That is, discussions among this close net group of co-workers about their unhappiness and disagreement with Claimant's DOL fiduciary rule policy, and their intent, and/or their desire, to leave Claimant etc., while employed at Claimant, did not: 1) cover a protectable business interest, 2) was not feasible and was unreasonable under the circumstances, given witnesses testimony about practices in the financial industry, and 3) the contract was limited to a specific group of individuals, that is, employees who were paid upfront bonuses. Stated differently, to the extent that Claimant is asserting that Fitzgerald's and Green's communication found in the many exhibits was solicitation of, or attempts to influence Claimant's employees to terminate their employment with Claimant during their employment, the non-solicitation clause is unreasonable, overly broad, void, and unenforceable under the circumstances presented. *See*, *Foster Cable Services, Inc. v. Deville*, 368 F. Supp. 3d at 1273-74.

The evidence showed Jonesboro is a big "little" city, and Fitzgerald, Green, Erwin and Peeler were all longtime friends. The exhibits and testimony introduced during the hearing revealed Fitzgerald and Green talked among themselves, with Peeler and Erwin, with BFE officials, and with other Claimant employees, about their general unhappiness with Claimant's management decisions, concerns about the workplace environment, concerns about Claimant's operations and policies, concerns about Claimant's implementation of the DOL fiduciary rule, and the pros and cons of terminating their employment with Claimant "during their employment with Stephens." In addition, since sales assistants also terminated their employment with Claimant and went to work for BFE, it is a logical conclusion that, at some point prior to terminating their employment with Claimant, the Respondent FAs told their sales assistant about their intent to terminate their employment with Claimant and about their recruitment by BFE. However, Claimant failed to present evidence that Erwin, Fitzgerald and Green, directly or indirectly, asked, influenced, solicited, and/or encouraged their sales assistant, or any other employees, to

[4] Claimant contended Respondents' discovery did not request notes. Respondents sought analyses and comparative information from Claimant in prehearing motions which were denied by the panel. However, the relevance and importance of this information became clear during Palermo's testimony about the master spreadsheet, and possibly notes, she created in her analysis of the entire PCG's Group's account designations. In addition, Respondent's discovery requests were drafted broad enough to cover any notes that may have been created by Palermo during Claimant's DOL fiduciary rule implementation. *See Respondents' First and Second Motions to Compel Responses to Production.*

terminate employment with Claimant. Notably, Fitzgerald testified his assistant made her own decision to leave, she asked him to provide her salary information to BFE, and Claimant offered no rebuttal to this testimony. According to the National Labor Relations Board (NLRB), employees have a right to discuss salary and wages. *See, NLRB v. Brookshire Grocery Co*., 919 F.2d 359 (5th Cir. 1990).

Further, Claimant failed to prove that Erwin, Fitzgerald and Green breached their contracts by releasing confidential information. The exhibits containing communication between these three Respondent FAs with BFE did not reflect that Erwin, Fitzgerald and Green disclosed impermissible confidential business information, proprietary, trade secrets, formulas, methods, or devices which gave BFE an advantage over Claimant. Claimant's DOL fiduciary rule policy was not confidential information or a trade secret which was not to be disclosed to the public. To the contrary, hearing testimony reflected industry-wide information was circulated about how firms were implementing the DOL fiduciary rule. Overall, I find the great weight of the evidence presented showed Erwin, Fitzgerald and Green (and Peeler) were friends, they talked with each other, and BFE officials, about their unhappiness and concerns about the way Claimant was implementing the DOL fiduciary rule, sought information about BFE's policy on the DOL fiduciary rule, and discussed the pros and cons of leaving Claimant. Absent Claimant's overly-broad, voidable, and unenforceable, pre-termination solicitation contract clause, this type of conversation was not otherwise prohibited or otherwise viewed as improper by anyone who testified - including Claimant's witnesses. For these reasons, I find Claimant failed to prove Erwin, Fitzgerald and Green breached their contracts as alleged in Count 2 of its claim.

As to Peeler, I find Claimant established Peeler breached his contract because he directly and indirectly sought to influence and solicit Fitzgerald, Green, Long, and Ken Hall Barnett ("Barnett"), a Claimant FA in Jackson, Mississippi, to terminate their employment with Claimant, both after he committed to working for Claimant in May 2016, and within one year following his termination with Claimant. Evidence was also introduced showing he provided BFE with confidential and detailed information about Claimant's employees. Although Peeler breached his contract when he directly and indirectly sought to influence and solicit Claimant's employees, I find that Peeler's breach of contract did not cause Green, Fitzgerald, Long, and Barnett to terminate their employment with Claimant. Rather, the proof showed Green and Fitzgerald, who were at will employees, terminated their employment with Claimant as a result of Claimant's business decision on implementation of the DOL fiduciary rule. Long and Barnett never became BFE employees. Accordingly, I find that Peeler's breach of the non-solicitation contract clause did not cause Claimant to suffer damages. (*See e.g., C129, C142, C145, C209, C211, C256, C269, C273, C269, C270, C277, C278, C278, C313, C472, C474, C284, C494*).

<u>Count 3: Tortious Interference with Economic Advantage, Contractual and Business Relations Against BFE and Edwards</u>

"To prove tortious interference under Arkansas law, Claimant had to satisfy the following elements: (1) the existence of a valid contractual relationship or a business expectancy;
(2) knowledge of the relationship or expectancy on the part of the interfering party;
(3) intentional interference inducing or causing a breach or termination of the relationship or expectancy; and (4) resultant damage to the party whose relationship or expectancy has been disrupted. *See, e.g.*, *K.C. Props. of N.W. Ark., Inc. v. Lowell Inv. Partners, LLC*, 373 Ark. 14, 26, 280 S.W.3d 1, 11 (2008). This court also requires that the defendant's conduct be at least

'improper' for a valid tortious-interference claim." *Crockett v. C.A.G. Investment, Inc*., 2010 Ark. 90 at page 9 (Ark. 2010).

Since I find Erwin terminated his employment with Claimant for personal reasons, Fitzgerald and Green terminated their employment with Claimant due to its DOL fiduciary rule policy, and that Claimant failed to meet its burden of proof to show these Respondent FAs breached the non-solicitation clauses of their contract, or alternatively, their non-solicitation contract clauses are void under the circumstances presented, Claimant's tortious interference claims against BFE and Edwards fails as to these individuals.

As previously discussed, Peeler breached his contract with Claimant when he directly and indirectly sought to influence Claimant's employees to terminate their employment with Claimant. Hence, an examination of BFE's and Edwards' conduct with regard to Peeler is warranted to determine if BFE and Edwards engaged in tortious interference. Hearing Exhibit C182 revealed that Buller sent an email to another BFE employee on May 19, 2016, announcing his plans to review Peeler's and Erwin's contracts. There is no indication elsewhere in the record that anyone at BFE reviewed these contracts prior to this date. Thus, as of on or about May 19, 2016, I find BFE knew or should have known about Peeler's contractual relationship, or business expectancy, directing him not to directly or indirectly seek to influence and solicit Claimant's employees. Subsequently, on June 22, 2016, Altenberger sent Buller an email asking whether Peeler would be willing to "influence anyone else to start with them," (Peeler and Erwin) and Buller responded that Peeler would be cautious until they opened and then he would go all out for them. (*Hearing Exhibit 473*). Further, on July 20, 2018, Edwards sent Peeler a text message, welcoming Peeler to BFE, stating he hoped "Tim and Jeff would see Edwards as their home" and requesting that Peeler "let us know how we can get this done with them." *(Hearing Exhibit C211*). In my opinion, Hearing Exhibits 211 and 473 show that BFE and Edwards, at a minimum, negligently and tortiously interfered with Peeler's contractual, non-solicitation relationship with Claimant and this conduct was improper.

After Peeler terminated his employment with Claimant, on September 6, 2016, Claimant sent letters to Peeler, Erwin and BFE, cautioning them against soliciting or seeking to influence Claimant's employees to terminate their employment with Claimant. (*Hearing Exhibits C263, C263, C264*). Thereafter, on September 24, 2016, Martin cautioned Peeler to avoid conversations with Claimant's employees and Altenberger weighed in and told Peeler he needed to check the letter from Claimant to determine Peeler's restrictions as to Claimant; however, he told Peeler there were no issues with reaching out to other FAs. (*Hearing Exhibit 474).* In October 2016, Peeler showed a BFE Jonesboro branch office space to Fitzgerald and Green. However, on November 29, 2016, Peeler sent Buller an email inquiring about Fitzgerald's and Green's recruitment status, and acknowledging that he and Erwin needed to "stay out of the mix." (*Hearing Exhibits C263, C263, C264, C278, C284*). At some point thereafter, Peeler sent Buller an email, informing Buller that Barnett might be interested in joining BFE and suggesting that Buller call Barnett. In sum, I find BFE and Edwards tortiously interfered with Peeler's contract provision which prohibited him from directly or indirectly influencing or soliciting employees to terminate their employment with Claimant. Moreover, the information that Peeler provided was helpful to BFE's recruitment of Fitzgerald and Green. While I find that BFE's and Edwards' conduct was improper, it is my opinion that BFE's recruitment efforts did not cause Fitzgerald and Green to terminate their employment with Claimant. Fitzgerald testified that he spoke with other firms and documentary evidence was introduced which supported this testimony.

Count 4: Breach of Fiduciary Duty/Duty of Loyalty Against Peeler, Erwin, Green and Fitzgerald

The law imposes a high standard of conduct upon an officer or director of a corporation, predicated upon the fact that he has voluntarily accepted a position of trust and has assumed control of the property of others*." Taylor v. Terry*, 279 Ark. 97, 98 (1983). However, even "a corporate fiduciary, while still employed, is free to notify his colleagues … of his intent to leave" and to "discuss his intent" with them. *Stuart C. Irby Co., Inc. v. Tipton*, 796 F.3d 918, 923 (8th Cir. 2015. Arkansas law strikes a careful balance between an employer's right to employee loyalty, and an employee's right … to resign and pursue his career with a competing employer." *Vigoro Industries, Inc. v. Cleveland Chemical Co*., 866 F. Supp. 1150 (E.D.Ark.1994); *Vigoro Indus., Inc. v. Crisp*, 82 F.3d 785, 788 (8th Cir. 1996). "Breach of fiduciary duty involves betrayal of a trust and benefit by a dominant party at the expense of one under his or her influence. *Cole v. Laws*, 349 Ark. 177, 76 S.W.3d 878, *cert. denied*, 537 U.S. 1003, 123 S. Ct. 509, 154 L. Ed. 2d 400 (2002). A person standing in a fiduciary relationship with another is subject to liability to the other for harm resulting from a breach of the duty imposed by the relationship. *Long v. Lampton*, 324 Ark. 511, 922 S.W.2d 692 (1996). Regardless of the express terms of an agreement, a fiduciary may be held liable for conduct that does not meet the requisite standards of fair dealing, good faith, honesty, and loyalty. *Sexton Law Firm, P.A. v. Milligan*, 329 Ark. 285, 948 S.W.2d 388 (1997). The guiding principle of the fiduciary relationship is that self-dealing, absent the consent of the other party to the relationship, is strictly proscribed. Id.; *Ark. Dev. Fin. Auth. v. Wiley*, 2020 Ark. 395, pages 5-6.

I find that Fitzgerald, Green, Erwin and Peeler did not breach a duty of loyalty to Claimant as to solicitation of employees. The proof revealed that the Respondent FAs were employees who were merely given officer titles once they achieved a certain level of production. Peeler and Green offered unrebutted testimony that they held similar sales titles when Claimant recruited them from Wachovia in 2008. Claimant failed to present evidence the Respondent FAs had any duties consistent with those of corporate officers, which would include supervisory responsibilities, branch manager, corporate decision-making responsibilities, or that they held positions of trust. Consequently, I find the Respondent FAs had a right to leave Claimant to work for a competitor.

Further, Claimant contended that Claimant's 2008 recruitment of several Wachovia employees, which included Gay, Peeler, Fitzgerald, Green, and several sales assistants, was irrelevant to whether the Respondents FAs breached a duty of loyalty and engaged in wrongful conduct, because no signed employment agreements existed containing non-recruitment or loyalty provisions. I disagree. I find it relevant that Claimant's officers, namely Claimant's PGC Director Scanlon and Feltus ("Feltus"), a senior executive vice president and COO at Claimant, testified no one breached a duty of loyalty when substantially similar conduct occurred during Claimant's 2008 recruitment. This conduct, included Peeler arranging a meeting at his Jonesboro home with Scanlon, Feltus, and several Wachovia FAs, and regular meetings and phone calls with Scanlon while the FAs were working for Wachovia, and HOVs with Claimant.

Claimant's industry expert, Maine, testified that the Wachovia FAs' and Claimant's officers' conduct during their 2008 recruitment from Wachovia to Claimant did not constitute a breach of a duty of loyalty owed to Wachovia. Although Maine testified, he had no knowledge whether the Wachovia FAs reached out to Claimant individually, or what got the ball rolling when Claimant recruited Wachovia's FAs in 2008, he said Gay and the other FAs did not breach a duty of loyalty owed to Wachovia in 2008. Moreover, he said he does not find it problematic if a FA employed with one firm arranged a meeting between another firm and FAs in his same firm, and he testified Gay did not breach a duty of loyalty owed to Wachovia when he coordinated meetings between Wachovia FAs and Claimant in 2008. Maine distinguished Gay's 2008 involvement with the FAs and sales assistants recruited by Claimant, stating Gay's activities in 2008 were "ministerial assistance" v. "encouragement." However, Gay's activities, as reflected in Hearing Exhibit 193, and according Gay's hearing testimony, were far from ministerial.

Gay acknowledged he prepared Hearing Exhibit 193, the "Indian Report", when he worked as a Wachovia FA in 2008, and he further acknowledged he served as the "go-between" for the other recruited FAs and Claimant. Hearing Exhibit 193, the "Indian Report," and Gay's testimony, reflected his conduct in 2008, was helpful to Claimant's recruitment of Wachovia's FAs and was essential in effectuating his and other FAs' move to Claimant. Among other things, Gay faxed information to Scanlon at 10:30 p.m. each night when he was obviously away from Wachovia, so as not to be detected; he sought recommendations from Scanlon about the timeline and order of the Wachovia FA's transitions to Claimant; he asked Scanlon if Wachovia sales assistants would be compensated for work performed while working at Wachovia in connection with the move to Claimant; he asked questions on behalf of other Wachovia FAs and provided the other FAs with Scanlon's responses; he asked Scanlon what could be done to get "Melissa" (sales assistant for Pete Murphy and Bill Harris) out of her contract, and whether Claimant would buy out her three year contract and Scanlon apparently responded to this question; he discussed Wachovia sales assistants salaries with Scanlon; he asked if Claimant would send the FAs their contacts for an early review, and Scanlon responded yes; he inquired whether Claimant could get "the Jr. advisors on Scanlon's schedule;" he asked about securing Claimant business cards for Wachovia employees prior to the move to Claimant; he informed Scanlon the Wachovia FAs planned to transfer over 8,000 accounts from Wachovia to Claimant; he provided Scanlon with AG Edwards buyout agreements of two Wachovia employees, (Scott and Arnold); and he discussed the possibly of raiding claims brought against him and other FAs with Scanlon. Gay also testified he requested an attorney to walk him and the other Wachovia FAs through the process, Claimant provided its in-house counsel to assist them with the move, and he and the other Wachovia FAs acted on the advice provided by Claimant's counsel. Gay further acknowledged he was the one who spoke with Claimant's in-house counsel, and he shared the guidance he received from Claimant's in-house counsel with the other Wachovia FAs. Gay testified he was free to engage in this type of conduct because he was not Wachovia's Jonesboro branch manager and he said a branch manager is held to a higher standard.

Scanlon described the 2008 meeting at Peeler's Jonesboro home as a "meet and greet" presentation, wherein he, Feltus, and several Wachovia FAs sat around, the FAs expressed their unhappiness, and the FAs reportedly told them the Wachovia situation was causing them embarrassment and pain. Scanlon said the next step was he made general counsel available, and the FAs talked to Claimant's general counsel, based on the number of FAs involved in the recruitment, and the amount of revenue involved. Scanlon said there was no hurry and they all had to consider some things. He added Claimant did not want to harm Wachovia or put Wachovia out of business and it was well known Wachovia officials told their FAs to "kick the tires." Hearing Exhibit R1 confirmed that Wachovia officials told its FAs to "kick the tires," however, Wachovia officials also expressed a belief that once FAs did so, they would remain with Wachovia. (*See Hearing Exhibit R1*). Feltus testified it was not problematic for him and Scanlon to travel to Jonesboro for the 2008 meeting with a group of Wachovia's FAs, and they obtained COO Curt Bradberry's approval before going to Jonesboro. He added he was sure

Scanlon consulted with Claimant's general counsel prior to their trip to Jonesboro. Both Scanlon and Feltus acknowledged they did not tell the Wachovia FAs to inform Wachovia management that they were meeting with Claimant. In addition, Feltus said he and Scanlon had no responsibility or duty to supervise the activities of the Wachovia recruits. He also said they had one or two meetings with a group of Wachovia's FAs in Jackson, Mississippi. In addition, Scanlon and Feltus testified neither their conduct nor Gay's conduct breached a duty of loyalty to Wachovia. However, both Scanlon and Feltus pointed out that FAs should be mindful and respectful of employment agreements with a firm and that the Respondent FAs were obligated to know their restrictions about recruiting employees according to their contracts with Claimant.

The Respondent FAs in this case were not branch managers and, except for Peeler, the Respondent FAs' conduct in the present case were nowhere near Gay's conduct reflected in Hearing Exhibit R193. However, Peeler's conduct, as reflected in the many hearing exhibits in this case, was substantially similar to Gay's conduct in 2008. Similar to Gay, Peeler coordinated meetings, provided helpful information to BFE about Fitzgerald and Green, and informed Fitzgerald and Green of information he learned from BFE officials. Hence, while I find Peeler breached his contract by directly and indirectly seeking to influence Claimant's employees, namely Fitzgerald, Green and Long to terminate their employment with Claimant, he did not breach a duty of loyalty to Claimant. Peeler, as was the case with Gay in 2008, was not a branch manager. Since witnesses' testimony, including the testimony of Claimant's officers and its expert, revealed Gay's conduct in 2008, which I find was similar to Peeler's conduct in this case, was not the type of conduct in the financial industry which constitutes a breach of a duty of loyalty, similar conduct does not become a breach of a duty of loyalty simply because the FAs in this case were recruited away from Claimant. In sum, I find that the proof in this case revealed the Respondent FAs in this case did not breach a duty of loyalty owed to Claimant by engaging in similar activity with BFE and Edwards.

Claimant contends Fitzgerald's and Green's high number of SA advisory and RSP platform designations was a breach of their duty of loyalty to Claimant. Scanlon, Palermo, Feltus, and other Claimant officials testified Fitzgerald's and Green's May 2017 Claimant's platform designations, as reflected in Hearing Exhibits C-13, and C-14, were highly suspect and implied their designations were obviously fraudulent because most of their clients' accounts were placed in Claimant's SA advisory and RSP platforms, which paid out higher broker fees. However, Claimant officials stated they did not discover the inappropriateness of these designations until after Fitzgerald and Green left Claimant on August 4, 2017. On the other hand, Green and Fitzgerald testified their choices were made in the best interests of their clients. In addition, Green and Fitzgerald testified that Claimant's officials encouraged them to select the SA Advisory Platform, and Fitzgerald testified that after he made his selections, Palermo questioned him about placing a number of his clients in the lower, broker fee paying RSP advisory platform. Moreover, Fitzgerald testified when he made his initial selections and sent them to Palermo, on May 12, 2017, he included several handwritten notes on the original document.

I find incredible Claimant's assertions that Green's and Fitzgerald's platform designations were highly suspect, and obviously inappropriate, and yet, no one mentioned the inappropriateness of these designations to them between May 15, 2017, when they made the designations, and August 4, 2017, when they resigned. Palermo testified she and Kevin Bennett, Claimant's head of operations, were responsible for implementing Claimant's DOL fiduciary rule platforms. She testified she met with Fitzgerald and Green to discuss Claimant's new platforms. However, she said they did not review Fitzgerald's and Green's platform designation, because they had no reason to suspect Green's and Fitzgerald's platform designations, until after they left Claimant, clients complained about the fees, and she performed a comparison of Claimant's entire PCG Groups' platform designations. She testified Claimant initially presented its PCG Group with three (3) fee-based advisory platforms in response to the DOL fiduciary rule; namely SRA - Stephens Retirement Access ($100 account), RSP - Stephens Retirement Solutions, and SA - Stephens Advisory Platform. The SA Platform had the highest broker fee, which was a 1% brokerage fee, and she testified she created a master spreadsheet listing the breakdown of platforms selection for all of Claimant's PCG Group. Demonstrative exhibits 13 and 14, which reportedly came from the master spreadsheet, showed most of Green's and Fitzgerald's accounts were placed in the SA advisory platform. Palermo testified she did not specifically recall conducting individual analyses of other FAs' platform designations, including Gay and Long, and she only recalled looking at the PCG Group's designations as a whole. However, she had no problem recalling Fitzgerald's and Green's platform designations and she testified she destroyed the master spreadsheet at some point after May 2017.

According to Palermo, the master spreadsheet she created revealed the breakdown for Claimant's PCG Group averaged one-third SRA, one-third RSP, and one-third SA. No documentation was introduced to support her testimony because this spreadsheet, and any written notes she may have created indicating a FA asked her "to follow up, to review, to analyze" a matter in connection with the DOL account designations were not produced, and were apparently destroyed. Palermo and other Claimant's witnesses testified they had no personal knowledge that Green and Fitzgerald failed to discuss with their clients what was in their best interest before making their platform designations, or that Green and Fitzgerald failed to actively work to retain clients following Peeler's and Erwin's departure from Claimant. However, there is proof in this record that Fitzgerald actually met with several of his clients prior to converting their accounts to Claimant's fee-based platforms, and that Fitzgerald and Green may have developed relationships with some of Peeler's and Erwin's clients who remained with Claimant following their departures. (*See Hearing Exhibit R78,* October 24, 2016 emails between Gay and Dan Lein, stating Fitzgerald went on a road trip and met with several clients each day to convert to advisory accounts. In addition*, see Hearing Exhibit C337,* email from Peeler to Buller, wherein Peeler states Fitzgerald and Green may have been assigned some of their old cases when they left Claimant, and suggesting Fitzgerald and Green may have developed relationships with their former clients).

Contrary to Palermo's testimony, Hearing Exhibit R111, revealed that on June 6, 2017, Palermo sent an email to Claimant's PCG financial consultants and PCG solutions, stating in part:

> During the conversion process, to our surprise, many of your clients selected SRA - Stephens' Retirement Access ($100 account) as their advisory platform option. We never anticipated that SRA would be the chosen option for so many of your clients. Additionally, our supervisory team has reviewed these selections and discussed the difficulty of advising large accounts with only one trade per year. As we explored the reasons behind the selection to SRA, we received feedback from a number of you about some of the challenges you face with some of your larger household and key accounts. In particular, accounts greater than $100,000 that are part of a large household, who struggled with deciding on an appropriate platform. You indicated to us that these are many of the accounts that ended up in the SRA $100 program.

I find Hearing Exhibit R111 supports Green's and Fitzgerald's testimony that Claimant encouraged FAs to place accounts in Claimant's SA advisory fee-based platform. In addition, Hearing Exhibits C11 and C12 revealed that Green sent Palermo his platform designations on May 12, 2017, and Fitzgerald sent Palermo his platform designations on May 15, 2017. Hearing Exhibit R109, showed that Palermo reviewed Fitzgerald's designations after he sent them to her on May 15, 2017. This exhibit also reflected Fitzgerald had 51% SA, 48% RSP, and 2% SRA platform designations, hence, this exhibit showed that Claimant's officials had notice of Fitzgerald's and Green's platform designations well in advance of their departures from Claimant on August 4, 2017.

Pursuant to FINRA Rule 3110, a branch manager and the chief compliance officer have the duty and responsibility to ensure FAs observe "high standards of commercial honor" in dealing with customers. This included the duty to review Green's and Fitzgerald's advisory fee platform designations for "red flags" and indications of wrongdoing. Testimony was presented that Gay and Saul Rousseau ("Rousseau"), Claimant's Support Team Supervisor, were responsible for reviewing Fitzgerald's and Green's account designations. West, Respondents' expert witness, testified Claimant had a responsibility to supervise Green's and Fitzgerald's account designations. In addition, he testified that if the designations were as suspicious and as inappropriate as suggested by Claimant's witnesses, the issues should have been quickly identified and sent back to these FAs with requests for explanations justifying the designations. West noted Claimant never objected to the designations during the three-month period between the designations and the FAs departures from Claimant. As discussed above, Palermo received Exhibits 11 and 12, which contained Fitzgerald and Green's designations by May 15, 2017. Yet, no one at Claimant expressed any concerns about their designations until after they left Claimant. In addition, Hearing Exhibit C346, an email to Claimant's PCG Financial Consultants, Sales Assistants, and copied to Scanlon, notified the PCG Group, which included Fitzgerald and Green, that advisory fees for Claimant's SA and SRA Platforms were debited from IRA clients' accounts on June 5, 2017, and the advisory fees for the RSP Platform were to be debited from clients' accounts on July 1, 2017. This means that advisory fees were debited from clients' SA advisory accounts two months before Green's and Fitzgerald's departures.

In sum, I find it incredible that despite that Fitzgerald's and Green's platform designations were "highly suspect" and "obviously inappropriate," as described by Claimant's witnesses, despite Palermo's knowledge of these designations in May 2017, despite that Gay and Rousseau had a responsibility to ensure Fitzgerald's and Green's designations were appropriate, and despite the fact that Claimant deducted SA advisory fees from accounts on June 5, 2017, no "red flags" were raised until after these Respondent FAs terminated their employment with Claimant, and that Fitzgerald and Green engaged in self-dealing, absent the consent of Claimant. Accordingly, I find that Claimant failed to introduce sufficient proof that Fitzgerald and Green breached a duty of loyalty to Claimant.

Count 5: Inducement of Breach of Fiduciary Duty/Duty of Loyalty Against BFE and Edwards

One who knowingly aids, encourages, or cooperates with a fiduciary in the breach of his duty becomes equally liable with such fiduciary." *Raines v. Toney*, 228 Ark. 1170, 1182 (1958).

Given that the Respondent FAs in this case were not branch managers or fiduciaries, and given the testimony of all witnesses in this case that when Gay and Claimant's officers engaged in similar conduct in 2008, they did not breach, or induce a breach, of a duty of loyalty with regards to solicitation of employees; and, because I find that the events in 2008 set the standard for determining whether conduct of this type is considered a breach of the duty of loyalty in the financial industry and in this case: and, because I find Peeler's conduct in this case was similar conduct to his and Gay's conduct in 2008; and, because I find Claimant failed to show the remaining Respondent FAs in this case solicited Claimant's employees to terminate their employment; and, because I find that the conduct of the remaining Respondent FAs in this case did not rise anywhere near the level of Gay's conduct in 2008; I find BFE and Edwards did not induce breach of a duty of loyalty owed to Claimant.

Count 6: Business Slander and Libel Against BFE, Green and Fitzgerald

In order to prevail on a business slander and libel claim, a claimant must show: (1) claimant sustaining damages; (2) respondents making a false statement of fact; (3) that the statement of fact was defamatory; (4) that respondents acted with negligence in failing to determine the truth of the statement prior to making the statement or knew the statement was false; and (5) that the statement was the proximate cause of claimants' damages. *Walmart Stores, Inc. v. Lee*, 348 Ark. 707, 731 (2002). A viable action for defamation turns on whether the communication or publication tends or is reasonably calculated to cause harm to another's reputation. *Dodson v. Allstate Ins. Co*., 345 Ark. 430, 47 S.W.3d 866 (2001); *Southall v. Little Rock Newspapers, Inc.,* 332 Ark. 123, 964 S.W.2d 187 (Ark. 1998).

I find Claimant failed to prove BFE, Edwards, Green and Fitzgerald committed business liable and slander against Claimant. There was testimony that a few, close clients were told these FAs were leaving Claimant. I find, if they were told this, it was true, even if one disagrees with their reasoning. As reflected in Hearing Exhibit 409, the panel entered an order on October 17, 2018, granting, in part, Claimant's motion to compel discovery. This order gave Claimant an opportunity to obtain documentary evidence supporting their claim that Green and Fitzgerald actually made disparaging and/or false statements about Claimant. However, no documentary proof was presented during the hearing. Instead, James, the PCG Regional Manager, testified he spoke with a "fellow" who told him he left Claimant because Claimant forced him to pay the one percent SA fee and this fellow cancelled his transfer when James explained this was not the case. (*See Claimant's Post Hearing Brief, Exhibit A*). In addition, James testified that he "didn't make an effort to get in touch with a large percentage of" Fitzgerald's and Green's clients, and he said many clients would not discuss their accounts with him. *Id*. James further testified he received information from a FA in the Hot Springs Branch, stating "he heard that Stephens was overcharging their clients." *Id*. Claimant also relied on Gay's double hearsay statement of Claimant's client Imogine McDaniel, which was reported by Gay in an email to Scanlon and James on September 7, 2017. This email stated, "Charles' client, called Charles inquiring about fees. She heard that our fees went up. She would not say who told her." (*Hearing Exhibit R5)*. Claimant also presented other generalized testimony about clients' complaints. However, I find that this type of hearsay evidence which was presented was unreliable, and that, overall, the testimonial evidence presented as to this issue was insufficient to meet Claimant's burden of proof as to Count 6, Business Slander and Libel.

Count 7: Conspiracy Against All Respondents

"To prove a civil conspiracy, a plaintiff must show that two or more persons have combined to accomplish a purpose that is unlawful or oppressive or to accomplish some purpose, not in itself unlawful, oppressive or immoral, but by unlawful, oppressive or immoral means, to the injury of another. *Chambers v. Stern*, 347 Ark. 395, 64 S.W.3d 737, (2002); *Dodson v. Allstate Ins. Co*., 345 Ark. 430, 47 S.W.3d 866, (2001); *Mason v. Funderburk*, 247 Ark. 521, 446, S.W.2d 543 (1969). A civil conspiracy is not actionable in and of itself, but a recovery may be had for damages caused by acts committed pursuant to the conspiracy. *Chambers v. Stern, supra*; *Dodson v. Allstate Ins. Co., supra*. A civil conspiracy is an intentional tort which requires a specific intent to accomplish the contemplated wrong. *Chambers v. Stern, supra; Dodson v. Allstate Ins. Co., supra*. In *Dodson v. Allstate Ins*., supra, the Court noted that a corporation cannot conspire with itself, since that defeats the requirement of a combination of two or more persons acting to accomplish some unlawful or oppressive purpose. Thus, in order to sustain a claim for a civil conspiracy where agents of a corporation are involved, it is necessary to show that one or more of the agents acted outside of the scope of their employment, to render them a separate "person" for purposes of the conspiracy. *Dodson*, at 876. A civil conspiracy requires that two or more persons have combined to accomplish a purpose that is unlawful or oppressive or to accomplish some lawful purpose by unlawful, oppressive or immoral means, to the injury of another. *Faulkner v. Arkansas Children's Hosp*., 69 S.W.3d 393, 406 (Ark. 2002). A civil conspiracy requires a specific intent to accomplish the contemplated wrong. *Id.*

I find Claimant failed to prove that BFE, Edwards, and the Respondent FAs combined to accomplish a raid, and/or to accomplish a purpose that was unlawful, and/or oppressive, or to accomplish some purpose, not in itself unlawful, oppressive or immoral, but by unlawful, oppressive or immoral means, to the injury of Claimant. For this reason, and the reasoning elsewhere in this dissent, I find Claimant's evidence presented as to this issue was insufficient to meet Claimant's burden of proof as to Count 7, Conspiracy.

Count 8: Unfair Competition Against All Respondents

"Deceptive and unconscionable trade practices made unlawful and prohibited by this chapter include, but are not limited to, the following: (1) Knowingly making a false representation as to the characteristics, ingredients, uses, benefits, alterations, source, sponsorship, approval, or certification of goods or services or as to whether goods are original or new or of a particular standard, quality, grade, style, or model; (2) disparaging goods, services, or business of another by false or misleading representation of fact." Ark. Code Ann. § 4-88-107(a).

For the reasons previously discussed, and for the reasons set forth in Count 11, I find Claimant failed to prove Respondents knowingly made false representations as to the characteristics, ingredients, uses, benefits, alterations, sources, sponsorships, approvals, or certifications of goods or services or as to whether goods were original or new or of a particular standard, quality, grade, style, or model; and/or that defendants (2) disparaged goods, services, or business of Claimant by false or misleading representation of facts. Therefore, I find Claimant's evidence presented was insufficient to meet Claimant's burden of proof as to Count 8, Unfair Competition.

Count 9: Unjust Enrichment Against Peeler, Erwin, Green and Fitzgerald

In order to find unjust enrichment, "a party must have received something of value to which he or she is not entitled and which he or she must restore." *Trickett v. Spann*, 552, 613 S.W.3d 773. Generally, recovery for unjust enrichment is based on what the enriched party has received rather than what the opposing party lost. *Id*. A tortious or fraudulent act is not required for recovery in a successful unjust-enrichment claim. *Id*. Moreover, unjust enrichment does not require a party to shoe the commission of a wrongful act by the enriched party; even an innocent defendant is subject to an unjust-enrichment claim brought by a more deserving party. *Id*.

For the reasons previously discussed, and for the reasons set forth in Count 11, I find Claimant failed to prove Respondents received something of value to which they were not entitled and which they must restore. Therefore, I find Claimant failed to meet its burden of proof as to Count 9, Unjust Enrichment.

Count 10: Conversion/Misappropriation of Confidential Information and Trade Secrets Against All Respondents

"Conversion is a common-law tort action for the wrongful possession or disposition of another's property; to establish liability for the tort of conversion, a plaintiff must prove that the defendant wrongfully committed a distinct act of dominion over the property of another, which is a denial of, or is inconsistent with, the owner's rights. *Hatchell v. Wren*, 363 Ark. 107, 116-17, 211 S.W.3d 516, 521 (2005). Conscious wrongdoing is not the requisite intent for conversion; what is required is the intent to exercise control or dominion over goods. *Car Transp. v. Garden Spot Distributors*, 305 Ark. 82, 88, 805 S.W.2d 632, 635 (1991). Unlike some jurisdictions, Arkansas does not require that the owner or person entitled to possession be completely deprived of their property in order for a conversion to occur. Rather, conversion occurs if the defendant exercises dominion over property in violation of, or in a way that is in denial of or inconsistent with, the rights of the owner or person entitled to possession." *Integrated Direct Marketing, LLC v. Drew May & Merkle, Inc.*, 2016 Ark. 281, at pages 3-4. Arkansas has a Theft of Trade Secrets Act, Ark. Code Ann. § 4-75-601 et seq., and there is a common law doctrine that protects an employer's confidential business information.

For the reasons previously discussed, and for the reasons set forth in Count 11, I find Claimant failed to prove Respondents wrongfully possessed, wrongfully disposed of, or wrongfully committed a distinct act of dominion over Claimant's property, which was a denial of, or inconsistent with, Claimant's rights. Therefore, I find Claimant failed to meet its burden of proof as to Count 10, Conversion.

Count 11: Violation of the Broker Protocol Against BFE

The Broker Protocol acts a contract to all signature firms. Both Claimant and BFE are signature firms. As such, they are contractually bound by the terms therein.

Claimant alleged the Respondents FAs were unjustly enriched, and that all Respondents engaged in unfair competition, they converted confidential information/trade secrets, and they violated the Protocol. However, I find Claimant failed to introduce sufficiently reliable and credible proof of these claims, and that most of Claimant's case was based on speculation and conjecture. As to BFE, I find Claimant failed to introduce credible and reliable proof that BFE violated the Broker Protocol by providing the Respondent FAs with ACAT forms, that BFE pre-solicited any of Claimant's clients, or that BFE received account information prohibited by the Broker Protocol. In my opinion, Claimant did not rebut the evidence presented that the use of *Broker2Broker*, same day emails, same day mailing of letters, same day phone calls, client office visits, and personal visits to some of the account holders, resulted in the speed of account transfers to BFE, the speed of which was never really clarified in the record.

Claimant did not allege Peeler and Erwin pre-solicited clients and did not introduce reliable proof these two FAs pre-solicited accounts. One of the primary premises behind Claimant's pre-solicitation allegation against Fitzgerald and Green, was that: 1) an unusually high number of Fitzgerald's and Green's clients transferred their accounts to BFE after they left Claimant and 2) the speed at which clients transferred accounts to BFE could only occur through pre-solicitation. However, the unrebutted evidence showed that these FAs transferred a similar number of clients to Claimant when they transferred from Wachovia in 2008, and Respondents' industry expert witness, West, testified an 85% to 90% FA client transfer retention rate was typical. In addition, West and BFE officials testified that BFE's use of *Broker2Broker's* back-office assistance resulted in the quick transfers. Claimant's expert, Maine, testified he did not analyze the speed of Fitzgerald's and Green's account transfers and did not offer a conclusion as to the impropriety of these transfers.

Fitzgerald and Green both denied the allegations claimed against them and testified they did not receive ACAT forms from BFE prior to their resignations from Claimant. Claimant failed to introduce credible and reliable evidence proving Green and Fitzgerald had access to BFE's ACAT forms prior to their transfer to BFE. Despite being provided with very broad latitude to discover and obtain documents and information from Respondents, including discovery of *Broker2Broker* documents, I find Claimant failed to introduce sufficiently reliable and credible evidence supporting its claims that Fitzgerald and Green engaged in impermissible contact with Claimant's clients prior to their resignations, printed account summaries, sent client data to their personal emails, told other than a few, close clients they were leaving Claimant, or that they engaged in pre-resignation solicitation.

Additionally, Fitzgerald and Green presented testimony stating they relied on BFE's instructions found in Hearing Exhibits C340 and C351, and they only took the protocol items listed in these exhibits when they transferred to BFE. Additionally, both Fitzgerald and Green testified BFE provided them with two thumb drives, they took one of the thumb drives, which contained Broker Protocol information to BFE on the Friday they resigned from Claimant, and they left the other thumb drive with identical information with Claimant. Green, Fitzgerald, and Yvonne Trautman, all offered unrebutted testimony that on the same Friday that Fitzgerald and Green resigned from Claimant, their licenses were quickly transferred to BFE, they immediately began to make phone calls to clients, emails were sent to all of their clients, and transfer letters were mailed out, all with the assistance of *Broker2Broker*. Green offered unrebutted testimony that some clients came by BFE on Saturday, "the packets started hitting the first part of the week," clients were calling, some clients came to BFE to complete transfers, they were "rolling," and during his first twenty-six days at BFE he skipped lunch to work on account transfers. (*See Respondents' Post Hearing Brief, Exhibit 10*).

Moreover, Fitzgerald provided unrebutted testimony that most of the names Claimant provided in its discovery response, Hearing Exhibit R247, Numbers 9-13, which purportedly listed Claimant's clients who were impermissibly contacted prior to their resignations, whose account summaries were allegedly printed, whose data was allegedly sent to their personal email, who were allegedly told they were leaving Claimant, and with whom they allegedly engaged in pre-resignation solicitation, were false. For instance, Fitzgerald's testimony as to Claimant's discovery response Number 9, revealed that only one of the names listed, Clovis Dement

("Dement"), was his account, and none of those listed were Green's accounts. Additionally, as to response Number 9, Fitzgerald testified the one exception, Dement, generally traded three to six times per year. Thus, according to testimony about Claimant's new fee-based platforms, placement of Dement's account in the SA advisory platform was proper. Also, according to Fitzgerald, he informed Dement about the three fee-based options Claimant was offering account holders, and he said Dement contacted him after Claimant sent him a negative consent letter. *(Hearing Exhibit R232*). Fitzgerald said Dement was not happy with the information Fitzgerald provided, "fussed" about the fee, and told Fitzgerald he was moving his account to Fidelity. Fitzgerald provided similar unrebutted testimony as to Claimant's discovery response in Hearing Exhibit R247, Numbers 10-13. As to these discovery responses, he testified that, with one or two exceptions, none of the accounts listed were his accounts or Green's accounts, some of the accounts listed were Long's accounts, and that one of the accounts listed, Paragould, was not a client at all, but rather, it was the name of the city where he resided prior to moving to Jonesboro.

Claimant presented the hearsay testimony of FA Stacey Harrell ("Harrell"), Merrill Lynch's Jonesboro Branch Manager, in support of its claim that Green pre-solicited clients. Harrell testified that she and Green had a mutual client, Billy Joe Trammel ("Trammel"), who was in his 70s, and who died in 2018. According to Harrell, at some point in 2017 after Green's departure from Claimant, Trammel also reportedly told her that Green told him that he was leaving Claimant, and Green had him sign a form transferring his account to BFE. Trammel also reportedly told Harrell this pre-solicitation occurred approximately one week prior to Green's departure from Claimant. Harrell testified she did not make any contemporaneous notes of her conversation with Trammel. In addition, Harrell testified she never told Green about her conversation with Trammel, and she spoke with a Claimant representative about Trammel's comments for the first time in 2019, approximately one month prior to her hearing testimony. Further, Harrell stated she had no personal knowledge Green had access to BFE's ACAT forms before he joined BFE. No documentary evidence was introduced in support of Harrell's testimony.

Claimant also introduced the testimony of Scanlon as additional proof of Green's alleged wrongdoing. That is, Scanlon testified they had to send letters to Claimant's account holders because of Fitzgerald and Green's SA advisory and RSP platform designations, which implied not one single choice of these designations was legitimate. Scanlon also testified an insurance company questioned the authenticity of an unnamed male client's signature on an ACAT transfer form submitted by Green, and he suggested Green forged this ACAT form. (*See Hearing Exhibit R5*). James testified he spoke with a "fellow" who told him he left because Claimant raised its fees, and he said he "didn't make an effort to get in touch with a large percentage of" Fitzgerald's and Green's clients, because many clients would not discuss their accounts with him. (*Claimant's Post Hearing Brief, Exhibit A*). As previously noted, Fitzgerald and Green denied all of the allegations made by Claimant. In particular, Green denied he pre-solicited Trammel or any of his other clients, he denied Trammel signed an ACAT form prior to his departure from Claimant, and he denied he signed the unnamed client's ACAT form. Rather, he testified Trammel and another client were sickly and bedridden, he personally visited these clients at their home after he transferred to BFE, he assisted these clients with the necessary paperwork, and these clients signed the ACAT forms.

The testimony offered by Harrell, Scanlon, James, and others would be objectionable hearsay if offered in a court of law because their testimony was in the form of out of court, unsworn, oral statements, introduced to prove the truth of the matter asserted, i.e., pre-solicitation. I accept that arbitration rules allow for more liberal introduction of evidence, and that the rules of evidence do not usually apply in arbitration. However, pre-solicitation of Claimant's clients was a crucial issue in this case, and I find the referenced hearsay testimony was insufficiently reliable to prove such a critical issue. Specifically, in the absence of the opportunity to cross-examination the declarants, there was no way to test whether a declarant, such as Trammel, might have been mistaken about the date, whether he recalled correctly, or whether his memory was faulty. Moreover, other than the name of a female client, who Gay said reportedly heard Claimant's fees went up, most of the declarants are unknown, and there is no way to test the reliability of their statements, and, one must speculate that BFE, Fitzgerald, and Green, rather than, for instance, one or several of Claimant's clients told other clients that Claimant's fees went up, particularly since Jonesboro was described as a big “little” city.

In sum, I find that Claimant failed to produce sufficient credible and reliable evidence that Fitzgerald, Green, Peeler and Erwin pre-solicited clients and took impermissible information, or impermissible business assets with them to BFE, and that BFE, Edwards, and the Respondent FAs were unjustly enriched, engaged in unfair competition, converted confidential information and trade secrets, or violated the Broker Protocol. I further find that Claimant has continued to have variable profits subsequent to the Respondent FAs departure from Claimant. (*See Hearing Exhibit R293*).

FEES

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

Filing Fees
FINRA Dispute Resolution Services assessed a filing fee* for each claim:

Initial Claim Filing Fee	=$	1,700.00
Counterclaim Filing Fee	=$	1,700.00

**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 parties, Claimant and BFE are each assessed the following:

Member Surcharge	=$	1,900.00
Member Process Fee	=$	3,750.00

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

November 6-9, 2018, postponement requested by Parties	=$	Waived
December 4-7, 2018, postponement requested by Parties	=$	1,125.00
March 30 – April 2, 2020 postponement requested by Parties	=$	Waived
Total Postponement Fees	=$	1,125.00

The Panel has assessed $562.50 of the postponement fees to Claimant.

The Panel has assessed $562.50 of the postponement fees jointly and severally to Respondents.

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 Arbitrator(s), including a pre-hearing conference with the Arbitrator(s), which lasts four (4) hours or less. Fees associated with these proceedings are:

Twelve (12) pre-hearing sessions with the Panel @ $1,125.00/session			=$ 13,500.00
Pre-Hearing Conferences:	January 24, 2018	1 session	
	July 27, 2018	1 session	
	October 5, 2018	1 session	
	October 10, 2018	1 session	
	December 17, 2018	1 session	
	May 20, 2019	1 session	
	August 23, 2019	1 session	
	September 25, 2019	1 session	
	March 31, 2020	1 session	
	April 30, 2020	1 session	
	September 15, 2020	1 session	
	January 5, 2021	1 session	
Seventy-two (72) hearing sessions @ $1,125.00/session			=$ 81,000.00
Hearings:	May 21, 2019	2 sessions	
	May 22, 2019	2 sessions	
	May 23, 2019	1 session	
	June 10, 2019	2 sessions	
	June 11, 2019	2 sessions	
	June 12, 2019	2 sessions	
	June 14, 2019	2 sessions	
	August 5, 2019	2 sessions	
	August 6, 2019	2 sessions	
	August 7, 2019	2 sessions	
	August 9, 2019	2 sessions	
	October 28, 2019	2 sessions	
	October 29, 2019	2 sessions	
	October 30, 2019	2 sessions	
	October 31, 2019	2 sessions	
	January 13, 2020	2 sessions	
	January 14, 2020	2 sessions	
	January 15, 2020	2 sessions	
	January 16, 2020	2 sessions	
	November 9, 2020	2 sessions	
	November 10, 2020	2 sessions	
	November 11, 2020	2 sessions	
	November 12, 2020	2 sessions	

November 13, 2020	2 sessions
February 8, 2021	2 sessions
February 9, 2021	2 sessions
February 10, 2021	2 sessions
February 11, 2021	2 sessions
February 12, 2021	2 sessions
March 29, 2021	2 sessions
March 30, 2021	2 sessions
March 31, 2021	2 sessions
June 9, 2021	1 session
June 10, 2021	2 sessions
November 8, 2021	2 sessions
November 9, 2021	2 sessions
November 10, 2021	2 sessions

Total Hearing Session Fees =$ 94,500.00

The Panel has assessed $5,625.00 of the hearing session fees to Claimant.

The Panel has assessed $88,875.00 of the hearing session fees jointly and severally to Respondents.

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

ARBITRATION PANEL

Jeff Mueller	-	Public Arbitrator, Presiding Chairperson
Linda Nettles Harris	-	Public Arbitrator
Gena Jacobs Wolbrecht	-	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

Jeff Mueller **01/20/2022**

Jeff Mueller
Public Arbitrator, Presiding Chairperson

Signature Date

Gena Jacobs Wolbrecht **01/19/2022**

Gena Jacobs Wolbrecht
Non-Public Arbitrator

Signature Date

Dissenting Arbitrator's Signature

Linda Nettles Harris **01/20/2022**

Linda Nettles Harris
Public Arbitrator

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 21, 2022
Date of Service (For FINRA Dispute Resolution Services use only)