

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Frank Hogan, Daryl Allen, and Langston Turner

Case Number: 16-03296

vs.

Respondent

Credit Suisse Securities (USA) LLC

Hearing Site: Houston, Texas

Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

Nature of the Dispute: Associated Persons vs. Member

The evidentiary hearing was conducted partially by videoconference.

REPRESENTATION OF PARTIES

For Claimants Frank Hogan (“Hogan”), Daryl Allen (“Allen”), and Langston Turner (“Turner”), collectively, “Claimants”: Rogge Dunn, Esq. and Joshua Iacuone, Esq., Rogge Dunn Group, PC, Dallas, Texas.

For Respondent Credit Suisse Securities (USA) LLC (“Respondent”): David Pegno, Esq., Esq., Dewey Pegno & Kramarsky LLP, New York, New York and Marcia Nelson Jackson, Esq., Wick Phillips, Dallas, Texas.

CASE INFORMATION

Statement of Claim filed on or about: November 11, 2016.

Statement of Answer to Counterclaim filed on or about: January 23, 2017.

Amended Statement of Claim filed on or about: July 2, 2019.

Amended Statement of Answer to Counterclaim filed on or about: November 29, 2021.

Claimants signed the Submission Agreement: September 21, 2016.

Statement of Answer filed on or about: January 4, 2017.

Statement of Answer to Amended Statement of Claim and Counterclaims filed on or about: July 23, 2019.

Respondent signed the Submission Agreement: January 3, 2017.

CASE SUMMARY

In the Statement of Claim, as amended, Claimants asserted the following causes of action: violation of FINRA Rules/frivolous litigation; wrongful discharge; constructive discharge; violation of Texas labor and wage laws; violation of New York labor and wage laws; violation of federal labor and wage laws; forfeiture of vested compensation in violation of the Employee Retirement Income Security Act of 1974 (ERISA); illegal forfeiture of earned compensation; illegal forfeiture of unvested compensation; failure to timely pay wages upon termination and waiting time penalties; unfair competition; breach of good faith and fair dealing; fraud and fraudulent inducement; misrepresentation; negligent misrepresentation; quantum meruit and unjust enrichment; promissory estoppel; breach of fiduciary duty; breach of contract regarding promissory note(s); conversion; and breach of contract. The causes of action related to Claimants' allegation that Respondent made numerous promises and representation to Claimants to entice them to come work for Respondent and then intentionally sacrificed Claimants' and Claimants' clients' best interest by shutting down its domestic private banking business.

Unless specifically admitted in the Statement of Answer the Statement of Claim, as amended, and Counterclaims, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In its Counterclaims, as amended, Respondent asserted the following causes of action: breach of contract, unjust enrichment, breach of fiduciary duty, unfair competition, and misappropriation of trade secrets. The causes of action related to Respondent's allegation that Claimants breached their contracts with, and fiduciary duties to, Respondent by misappropriating its confidential and proprietary information, by resigning without providing the 60-days notice they were required to give, and by impermissibly soliciting Respondent's clients.

Unless specifically admitted in the Statement of Answer to Counterclaims, as amended, Claimants denied the allegations made in the Counterclaims and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, as amended, Claimants requested actual damages of at least \$7,000,000.00 and \$1,400,000.00 in punitive damages, including:

- 1) All of Claimants' deferred compensation;
- 2) Earned but unpaid compensation;
- 3) All of Claimants' commissions, wages, bonuses, fees and/or other withheld and/or forfeited;
- 4) The value of Claimants' deferred compensation;
- 5) Reasonable attorneys' fees incurred in the prosecution of Claimants' claims and this action;
- 6) Reasonable attorneys' fees incurred in defending the counterclaim, if any;
- 7) Statutory penalties damages under New York law;
- 8) Statutory penalties damages under Texas law;
- 9) Liquidated damages under Texas law and New York law;
- 10) Punitive damages;
- 11) Damages to Claimants' reputation;
- 12) Past lost earnings;
- 13) Future lost earnings;

- 14) Future lost earning capacity;
- 15) The highest pre-judgment and post-judgment interest permitted by law on all damages and/or unpaid monies;
- 16) FINRA forum and other fees;
- 17) The attorneys' fees, litigation expenses and other damages Claimants incurred as a result of Respondent's violation of FINRA Rules and/or filing a frivolous lawsuit against Claimants.
- 18) In the alternative, detrimental reliance damages, including but not limited to, the amounts Claimants would have earned had Claimants not accepted employment with Respondent;
- 19) In addition, a declaration is sought that Claimants owe Respondent nothing on any promissory note(s) entered into with Respondent and owe nothing for make whole payments on and/or any alleged overpayments by Respondent; and
- 20) Such other or further relief, whether at law, or in equity, to which the Panel determines Claimants are entitled.

In the Statement of Answer to Statement of Claim, as amended, and Counterclaim, Respondent requested:

Against Hogan:

- (i) full repayment of the outstanding principal balance of \$496,804.37 due under the terms of the Offer Letter and the Note, together with accrued but unpaid interest, collection costs, and attorneys' fees calculated as of the time of actual payment (amounts which continue to increase during the pendency of this arbitration);
- (ii) full repayment of the overpayment of compensation that was advanced to Hogan in the amount of \$48,296.00;
- (iii) damages sustained as a result of Hogan's breaches in an amount to be ascertained at the arbitration hearing;
- (iv) declaration that Hogan is not entitled to any unvested contingent deferred awards under the Master Share Plan and related documentation, whether under a legal theory of constructive termination or otherwise; and
- (v) such other and further relief as the Panel deems just and proper.

Against Allen:

- (i) full repayment of the outstanding principal and arrears balance of \$1,749,941.04 due under the terms of the Amended Offer Letter and the Amended Note, together with accrued but unpaid interest, collection costs, and attorneys' fees calculated as of the time of actual payment (amounts which continue to increase during the pendency of this arbitration);
- (ii) full repayment of the overpayment of compensation that was advanced to Allen in the amount of \$13,724.00;
- (iii) damages sustained as a result of Allen's breaches in an amount to be ascertained at the arbitration hearing;
- (iv) declaration that Allen is not entitled to any unvested contingent deferred awards under the Master Share Plan and related documentation, whether under a legal theory of constructive termination or otherwise; and
- (v) such other and further relief as the Panel deems just and proper.

Against Turner:

- (i) full repayment of the outstanding principal balance of \$621,075.55 due under the terms of the Offer Letter and the Note, together with accrued but unpaid interest, collection costs, and attorneys' fees calculated as of the time of actual payment (amounts which continue to increase during the pendency of this arbitration);
- (ii) full repayment of the overpayment of compensation that was advanced to Turner in the amount of \$61,702.00;
- (iii) damages sustained as a result of Turner's breaches as set forth above, in an amount to be ascertained at the arbitration hearing;
- (iv) declaration that Turner is not entitled to any unvested contingent deferred awards under the Master Share Plan and related documentation, whether under a legal theory of constructive termination or otherwise; and
- (v) such other and further relief as the Panel deems just and proper.

As Against Hogan, Allen, and Turner:

- (i) damages sustained as a result of Hogan, Allen, and Turner's breaches as set forth above;
- (ii) dismissing the Statement of Claim in its entirety, with prejudice; and
- (iii) such other and further relief as the Panel deems just and proper.

In the Statement of Answer to Counterclaim, as amended, Claimants requested that Respondent take nothing by way of its Counterclaim, that its request for declaratory relief be denied, and that all of Respondent's claims be dismissed with prejudice. Claimants also requested damages against Respondent to compensate for the wrongs, claims, and causes of action described in the Statement of Answer to Counterclaim, as amended, including:

- 1) All of Claimants' deferred compensation;
- 2) Earned but unpaid compensation;
- 3) All of Claimants' commissions, wages, bonuses, fees and/or other compensation;
- 4) The value of Claimants' deferred compensation;
- 5) Reasonable attorneys' fees incurred in the prosecution of Claimants' claims and this action;
- 6) Reasonable attorneys' fees incurred in defending the Counterclaims, if any;
- 7) Statutory penalties damages;
- 8) Liquidated damages;
- 9) Punitive damages;
- 10) Damages to Claimants' reputation;
- 11) Past lost earnings;
- 12) Future lost earnings;
- 13) Future lost earning capacity;
- 14) The highest pre-judgment and post-judgment interest permitted by law on all damages and/or unpaid monies;
- 15) FINRA forum and other fees;
- 16) The attorneys' fees, litigation expenses, and other damages Claimants incurred Respondent's violation of FINRA rules and/or filing a frivolous lawsuit against Claimants;
- 17) In the alternative, detrimental reliance damages, including but not limited to, the amounts Claimants should have earned had Claimants not continued employment with Respondent;
- 18) In addition, a declaration Claimants owe Respondent nothing on any alleged overpayments by Respondent and any promissory note(s) are null and void; and

19) Dismissal in toto of the Counterclaim and striking of the Counterclaim for Respondent's blatant forum shopping and knowing violation of FINRA Rules by refusing to arbitrate this matter with FINRA.

Claimant also requested such other or further relief, whether at law, or in equity, to which the Panel determines Claimants are entitled.

At the hearing, Claimants requested relief as follows:

As to all Claimants:

- a. A declaration that the promissory notes are declared null and void;
- b. That Respondent's claims and counterclaims are denied in the entirety;
- c. Compensatory damages of \$7,772,328.00;
- d. Pre-judgment simple interest of 6% per annum from November 10, 2016 to the date of Award;
- e. Reasonable and necessary attorneys' fees in an amount between \$1,000,000.00 and \$1,200,000.00;
- f. Punitive damages of \$7,312,328.00; and
- g. That all FINRA forum, session, and any other FINRA fees be assessed against Respondent.

As to Allen:

- a. Deferred compensation as of November 2015 in the amount of \$111,318.38 and lost production of \$1,545,797.78, totaling, \$1,657,116.16;
- b. Pre-judgment simple interest from November 10, 2016 to the date of Award;
- c. Reasonable and necessary attorneys' fees;
- d. Punitive damages of \$2,427,442.00 (or 1/3 of the total punitive damages for all Claimants);
- e. That all FINRA forum, session, and any other FINRA fees be assessed against Respondent;
- f. That Respondent's claims and counterclaims be denied *in toto*.

As to Hogan:

- a. Deferred compensation as of November 2015 in the amount of \$1,098,505.13 and lost production of \$1,931,111.36, totaling, \$3,029,616.49;
- b. Pre-judgment simple interest from November 10, 2016 to the date of Award;
- c. Reasonable and necessary attorneys' fees;
- d. Punitive damages of \$2,427,442.00 (or 1/3 of the total punitive damages for all Claimants);
- e. That all FINRA forum, session, and any other FINRA fees be assessed against Respondent;
- f. That Respondent's claims and counterclaims be denied *in toto*.

As to Turner:

- a. Deferred compensation as of November 2015 in the amount of \$2,581,868.77

- and lost production of \$5,190,511.36, totaling, \$7,772,380.13;
- b. Pre-judgment simple interest from November 10, 2016 to the date of Award;
- c. Reasonable and necessary attorneys' fees;
- d. Punitive damages of \$2,427,442.00 (or 1/3 of the total punitive damages for all Claimants);
- e. That all FINRA forum, session, and any other FINRA fees be assessed against Respondent;
- f. That Respondent's claims and counterclaims be denied in toto.

At the hearing, Respondent requested total compensatory damages of \$3,781,308.93, including, as to Hogan, principal in the amount of \$496,804.37 and interest in the amount of \$182,955.35; as to Allen, principal in the amount of \$1,745,806.07, arrears in the amount of \$4,134.97, and interest in the amount of \$487,716.24; and as to Turner, principal in the amount of \$621,075.55 and interest in the amount of 242,816.38.

OTHER ISSUES CONSIDERED AND DECIDED

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

On July 2, 2019, Claimants filed a Motion for Leave to File Amended Statement of Claim ("Motion to Amend"). On July 10, 2019, Respondent filed an Opposition to the Motion to Amend. On July 15, 2019, Claimants filed a Reply in Support of the Motion to Amend. In an Order dated July 16, 2019, the Panel granted the Motion to Amend.

On May 30, 2019, Claimants filed a Motion to Enforce Order and for FINRA Rule 13212 Relief ("Claimants' Motion for Sanctions"). On June 10, 2019, Respondent filed an Opposition to Claimants' Motion for Sanctions. On June 14, 2019, Claimants filed a Reply to Respondent's Opposition to Claimants' Motion for Sanctions. On June 18, 2019, Respondent filed a Response to Claimants' Reply on Claimants' Motion for Sanctions. In an Order dated July 10, 2019, the Panel denied Claimants' request for sanctions.

On September 23, 2020, Respondent filed a Motion for Sanctions Related to Claimants' Spoliation of Evidence ("Respondent's Motion for Sanctions"). On October 5, 2020, Claimants filed an Opposition to Respondent's Motion for Sanctions. On October 12, 2020, Respondent filed a Reply in Support of Respondent's Motion for Sanctions. On October 16, 2020, Claimants filed a Sur-Reply to Respondent's Motion for Sanctions. In an Order dated October 20, 2020, the Panel ruled that Respondent's Motion for Sanctions "will be carried along with the case so that the [P]anel can hear sworn testimony on these issues at the hearing." Herein, the Panel denies Respondent's Motion for Sanctions.

On November 29, 2021, Claimants filed a Motion for Leave to File Previously Unopposed Amended Answer to Counterclaims ("Motion for Leave"). On December 9, 2021, Respondent filed a Response to Claimants' Motion for Leave. On December 10, 2021, Claimants filed a Reply in Support of the Motion for Leave and Motion to Strike Respondent's Counterclaims ("Motion to Strike"). On December 17, 2021, Respondent filed an Opposition to the Motion to Strike.

On December 22, 2021, Respondent filed a Request for the Hearing to Proceed Remotely ("Motion for Remote Hearing"). On December 23, 2021, Claimants filed a Response to the Motion for Remote Hearing. In an Order dated the same day, the Panel denied the Motion for Remote Hearing.

At the hearing, on the record, the Panel granted Claimant's Motion for Leave.

After the commencement of the in-person hearing, in an Order dated January 11, 2022, the Panel and parties agreed that the remainder of the hearing would proceed remotely beginning on January 13, 2022.

The Panel has provided a rationale of the decision in this award. The rationale 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.

RATIONALE

The Panel finds that there is substantial evidence that the three Claimants voluntarily resigned from Respondent. However even if there was a constructive discharge, the Panel finds that Claimants suffered no damages because their UBS deals were designed to, and in fact did, more than fully compensate them for the loss of their Credit Suisse deferred compensation.

AWARD

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

1. Claimants' claims are denied in their entirety.
2. Hogan is liable for and shall pay to Respondent the sum of \$496,804.37 in compensatory damages.
3. Hogan is liable for and shall pay to Respondent the sum of \$182,955.35 in interest.
4. Allen is liable for and shall pay to Respondent the sum of \$1,749,941.04 in compensatory damages.
5. Allen is liable for and shall pay to Respondent the sum of \$487,716.24 in interest.
6. Turner is liable for and shall pay to Respondent the sum of \$621,075.55 in compensatory damages.
7. Turner is liable for and shall pay to Respondent the sum of \$242,816.38 in interest.
8. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, treble damages, and attorneys' fees, are denied.

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	= \$	2,250.00
Counterclaim Filing Fee	= \$	3,400.00

**The filing fee is made up of a non-refundable and a refundable portion.*

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge	= \$	3,600.00
Member Process Fee	= \$	6,800.00

Postponement Fees

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

November 5-9 and 12, 2018, postponement requested by the parties	= \$	1,500.00
June 17-21, 2019, postponement requested by the parties	= \$	1,500.00
March 30-April 3 and April 6, 2020, postponement requested by the parties		WAIVED
March 29-April 2, 2021, postponement requested by the parties		WAIVED

Total Postponement Fees	= \$	3,000.00
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The Panel has assessed \$1,500.00 of the postponement fees jointly and severally to Claimants.

The Panel has assessed \$1,500.00 of the postponement fees to Respondent.

Discovery-Related Motion Fees

Fees apply for each decision rendered on a discovery-related motion.

Twelve (12) decisions on discovery-related motions on the papers with one (1) Arbitrator @ \$200.00/decision	= \$	2,400.00
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One (1) decision on a discovery-related motion on the papers with the Panel @ \$600.00/decision	= \$	600.00
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Claimants submitted seven (7) discovery-related motions

Respondent submitted six (6) discovery-related motions

Total Discovery-Related Motion Fees	= \$	3,000.00
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The Panel has assessed \$1,500.00 of the discovery-related motion fees jointly and severally to Claimants.

The Panel has assessed \$1,500.00 of the discovery-related motion fees to Respondent.

Hearing Session Fees and Assessments

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

Three (3) pre-hearing sessions with a single Arbitrator @ \$450.00/session	= \$	1,350.00
Pre-Hearing Conferences: January 14, 2020	1 session	
February 12, 2020	1 session	
February 17, 2020	1 session	
Seven (7) pre-hearing sessions with the Panel @ \$1,500.00/session	= \$	10,500.00
Pre-Hearing Conferences: March 29, 2017	1 session	
July 10, 2019	1 session	
January 3, 2020	1 session	
April 22, 2020	1 session	
June 24, 2020	1 session	
February 17, 2021	1 session	
December 30, 2021	1 session	
Twenty-five (25) hearing sessions @ \$1,500.00/session	= \$	37,500.00
Hearings: January 3, 2022	2 sessions	
January 4, 2022	2 sessions	
January 5, 2022	2 sessions	
January 6, 2022	2 sessions	
January 7, 2022	2 sessions	
January 10, 2022	2 sessions	
January 11, 2022	1 session	
January 13, 2022	2 sessions	
January 14, 2022	2 sessions	
January 18, 2022	3 sessions	
January 19, 2022	2 sessions	
January 20, 2022	2 sessions	
January 21, 2022	1 session	

Total Hearing Session Fees	= \$	49,350.00
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The Panel has assessed \$24,900.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$24,450.00 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

David C. Redford	-	Public Arbitrator, Presiding Chairperson
Michael S. Yauch	-	Public Arbitrator
Lewis Kenneth Harley	-	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

David C. Redford

David C. Redford
Public Arbitrator, Presiding Chairperson

02/11/2022

Signature Date

Michael S. Yauch

Michael S. Yauch
Public Arbitrator

02/10/2022

Signature Date

Lewis Kenneth Harley

Lewis Kenneth Harley
Non-Public Arbitrator

02/10/2022

Signature Date

Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

February 11, 2022

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