

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant
Citigroup Global Markets, Inc.

Case Number: 15-02192

vs.

Respondent
Thomas Marco Avitabile

Hearing Site: New York, New York

Nature of the Dispute: Member vs. Associated Person

REPRESENTATION OF PARTIES

For Claimant Citigroup Global Markets, Inc.: Christopher M. Rodriguez, Esq., Catania T. Facher, Esq. and Shannon Hagan, Esq.: Alonso, Andalkar & Facher, P.C., New York, New York.

For Respondent Thomas Marco Avitabile: David P. Stich, Esq., New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: August 25, 2015.

Answer to Respondent's Statement of Answer and Counterclaim filed on or about: November 9, 2015.

Answer to Respondent's Amended Statement of Answer and Counterclaim filed on or about: November 30, 2015.

Citigroup Global Markets, Inc. signed the Submission Agreement: August 25, 2015.

Statement of Answer and Counterclaim filed by Respondent on or about: October 19, 2015.

Amended Statement of Answer and Counterclaim filed by Respondent on or about: November 10, 2015.

Thomas Marco Avitabile signed the Submission Agreement: October 16, 2015.

CASE SUMMARY

Claimant asserted the following cause of action: breach of contract.

Unless specifically admitted in the Statement of Answer and Counterclaim, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in Claimant's Answer to Respondent's Statement of Answer and Counterclaim, Claimant denied the allegations made in the Statement of Answer and Counterclaim and asserted various affirmative defenses.

Unless specifically admitted in the Amended Statement of Answer and Counterclaim, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in Claimant's Answer to Respondent's Amended Statement of Answer and Counterclaim, Claimant denied the allegations made in the Amended Statement of Answer and Counterclaim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: (a) money damages in the amount of \$266,666.67, plus interest at the rate of 1.65% per annum, until the outstanding balance is paid in full; (b) money damages in the amount of \$2,233.85; (c) all costs, fees, and distribution of this action, including attorneys' fees; and (d) for such other and further relief as this Panel may deem just, proper and equitable.

In the Statement of Answer and Counterclaim Respondent requested money damages in an amount to be proved at the trial of this action; dismissing the Claimant's claim herein; and awarding all costs, fees and distributions of this proceeding including any attorneys' fees; and for such other and further relief as the Panel may deem just, proper and equitable.

In its Answer to Respondent's Answer and Counterclaim, Claimant requested: (a) dismissal of Respondent's Answer and Counterclaim in its entirety; (b) denial of all monetary and equitable relief sought in Respondent's Counterclaim; (c) that the relief sought in the Statement of Claim be granted; (d) that Claimant be awarded all costs, fees, and distribution of this action, including attorneys' fees; and (e) such other and further relief as this Panel may deem just, proper and equitable.

In the Amended Answer and Counterclaim, Respondent requested money damages in an amount to be proved at the trial of this action; dismissing the Claimant's claim herein; and awarding all costs, fees and distributions of this proceeding including any attorneys' fees; and for such other and further relief as the Panel may deem just, proper and equitable.

In its Answer to Respondent's Amended Answer and Counterclaim, Claimant requested: (a) dismissal of Respondent's Amended Answer and Counterclaim in its entirety; (b) denial of all monetary and equitable relief sought in Respondent's Counterclaim; (c) that the relief sought in the Statement of Claim be granted; (d) that Claimant be awarded all costs, fees, and distribution of this action, including attorneys' fees; and (e) such other and further relief as this Panel may deem just, proper and equitable.

OTHER ISSUES CONSIDERED AND DECIDED

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

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

AWARD

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

1. Respondent is liable for and shall pay to Claimant the sum of \$266,666.67 in compensatory damages.
2. Respondent is liable for and shall pay to Claimant the sum of \$2,233.85 for unpaid taxes.
3. Claimant is liable for and shall pay to Respondent the sum of \$77,000.00 in compensatory damages.
4. Respondent's award of compensatory damages in the amount of \$77,000.00 in item 3 above is an offset to Claimant's award in items 1 and 2 above. Therefore, Respondent is liable for and shall pay to Claimant \$191,900.52 plus interest at a rate of 1.65% per annum from March 6, 2015 until March 29, 2017.
5. Any and all claims for relief not specifically addressed herein, including attorneys' fees, are denied.

FEES

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

Filing Fees

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

Initial Claim Filing Fee	= \$ 2,125.00
Counterclaim Filing Fee	= \$ 1,575.00

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

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Citigroup Global Markets, Inc. is assessed the following:

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

Adjournment Fees

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

June 1, 2 and 6, 2016, adjournment by Claimant	= \$ 1,125.00
September 12 -15, 2016, adjournment by parties	= \$ 1,125.00
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Total Adjournment Fees	= \$ 2,250.00

The Panel has assessed \$1,125.00 of the adjournment fees to Claimant.
The Panel has assessed \$1,125.00 of the adjournment fees to Respondent.

Hearing Session Fees and Assessments

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

Two (2) pre-hearing sessions with the Panel @ \$1,125.00/session	= \$ 2,250.00
Pre-hearing conferences: February 4, 2016	1 session
June 8, 2016	1 session
Four (4) hearing sessions @ \$1,125.00/session	= \$ 4,500.00
Hearing Dates: March 28, 2017	2 sessions
March 29, 2017	2 sessions
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Total Hearing Session Fees	= \$ 6,750.00

The Panel has assessed \$3,375.00 of the hearing session fees to Claimant.
The Panel has assessed \$3,375.00 of the hearing session fees to Respondent.

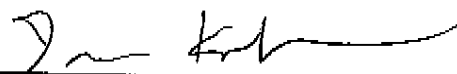
All balances are payable to FINRA Office of Dispute Resolution and are due upon receipt.

ARBITRATION PANEL

Irwin Kahn	-	Public Arbitrator, Presiding Chairperson
Keith Roberts	-	Public Arbitrator
David J. Pine	-	Non-Public Arbitrator

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

Concurring Arbitrators' Signatures



Irwin Kahn
Public Arbitrator, Presiding Chairperson



Signature Date

David J. Pine
Non-Public Arbitrator

Signature Date

Concurring in Part and Dissenting in Part Arbitrator's Signature

Keith Roberts
Public Arbitrator

Signature Date

My fellow arbitrators have voted to reduce the award to the Claimant by \$77,000, the amount by which Respondent claimed that the Claimant had injured him. I do not agree that Claimant injured Respondent by \$77,000, or that there is any legal basis for any other reduction to the award.

1. Respondent's loss did not amount to anything like \$77,000. Most of the diminished revenue had been expected because Respondent's former clients would not rapidly follow him to his new position. In fact, their slowness accounted for most of the reduction in his revenue; but, the diminishment was in the nature of an investment in his new position. By the bank's conservative projections, that investment stood to become very profitable to him later on.
2. Respondent claimed that he had to leave Claimant's employment because, contrary to recruitment promises, the branch did not give him all its referrals, and other financial advisers remained there. But, Respondent's signed employment agreement contains a merger clause that explicitly denies the validity of any prior

promise unless written in the employment agreement. But neither that agreement nor any other writing mentioned the alleged recruitment promises. Moreover, Respondent actually received the vast majority of the branch referrals, and evidently converted very few of those referrals into business. So whatever injury the breach of those promises caused Respondent was minimal.

3. Claimant clearly sought to retain Respondent, to ameliorate conditions at the bank branch, and help him succeed. The only legal basis for ignoring the terms of the employment agreement would be a showing that there was fraud in the inducement. But no such showing was made.

For these reasons, I dissent on the finding of an offset of compensatory damages. I concur with all other aspects of the award.

April 12, 2017

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

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Keith Roberts	-	Public Arbitrator
David J. Pine	-	Non-Public Arbitrator

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Irwin Kahn
Public Arbitrator, Presiding Chairperson

Signature Date

David J. Pine
Non-Public Arbitrator

Signature Date

Concurring in Part and Dissenting in Part Arbitrator's Signature



Keith Roberts
Public Arbitrator

April 6, 2017
Signature Date

My fellow arbitrators have voted to reduce the award to the Claimant by \$77,000, the amount by which Respondent claimed that the Claimant had injured him. I do not agree that Claimant injured Respondent by \$77,000, or that there is any legal basis for any other reduction to the award.

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April 12, 2017

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