

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Claimant

Thomas Y. Kim

v.

04-05405  
Denver, Colorado

Respondents

CUSO Financial Services, L.P.,  
Bellco Credit Union  
and Bellco First Financial Services, Inc.

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**NATURE OF DISPUTE**

Associated Person v. Member and Non-Members

**REPRESENTATION OF PARTIES**

Thomas Y. Kim ("**Claimant**") was represented by Ethan A. Brecher, Esq., of Liddle & Robinson, L.L.P., New York, New York.

CUSO Financial Services, L.P. ("**CUSO**" or "**Respondent**") was represented by Michael L. Kirby, Esq., of Post Kirby Noonan & Sweat, LLP, San Diego, California.

Bellco Credit Union and Bellco First Financial Services, Inc. did not participate.

**CASE INFORMATION**

The Statement of Claim was filed on or about July 28, 2004. The Submission Agreement of Claimant was signed on or about July 14, 2004.

The Statement of Answer was filed by Respondent, CUSO Financial Services, L.P., on or about September 24, 2004. The Submission Agreement of Respondent, CUSO Financial Services, L.P., was signed on or about September 24, 2004.

CUSO filed a Motion to Dismiss on or about August 15, 2005. Claimant filed a Response in Opposition to CUSO's Motion to Dismiss on or about September 15, 2005. CUSO filed a Reply in Support of its Motion to Dismiss on or about September 22, 2005.

CUSO filed a Motion for Leave to Amend its Statement of Answer on or about December 16, 2005. Claimant submitted a Response to CUSO's Motion to Amend on or about January 4, 2006.

Claimant filed a Motion for Leave to Amend his Statement of Claim on or about December 22, 2005. Respondent submitted a Response to Claimant's Motion to Amend on or about January 9, 2006.

### **CASE SUMMARY**

Claimant asserted causes of action including the following: breach of contract, libel or slander on Form U-5, tortious interference, violation of the Colorado Consumer Protection Act and violation of the covenant of good faith and fair dealing. The causes of action related to Claimant's allegation that CUSO terminated him without cause. Claimant asserted that CUSO attempted to alter his commission payout schedule and when Claimant objected CUSO terminated him. Claimant alleged that CUSO defamed him by stating on his U-5 that the reason for his termination was voluntary, when it was not, and that Claimant committed several sales practice violations. Claimant asserted that by doing so, CUSO attempted to enforce a non-solicitation/non-compete aspect of his employment agreement that prohibited him from maintaining any of the client relationships while at CUSO and destroyed his ability to generate revenue as a result.

Respondent denied the allegations set forth in the Statement of Claim and asserted defenses including the following: the Statement of Claim failed to state the facts sufficient to constitute a cause of action against CUSO; Claimant, by his acts and conduct, waived any and all claims as alleged in the Statement of Claim against CUSO; Claimant, by his acts and conduct, breached the CUSO Agreement, thereby relieving CUSO from any further obligations under the contract; Claimant, by his actions and conduct, is estopped from alleging any and all claims as asserted in the Statement of Claim; Claimant, by his actions and conduct, is the proximate cause for any and all damages suffered as alleged in the Statement of Claim; CUSO's good faith reporting of Claimant's misconduct on the Form U-5 is an act required by NASD and, as such, CUSO is immune from liability; and Claimant's cause of action for defamation failed as CUSO's reporting on Claimant's Forum U-5 was accurate and truthful.

### **RELIEF REQUESTED**

Claimant requested an award of \$7,000,000 in compensatory damages, plus punitive damages, treble damages, attorneys' fees, costs and any other relief the panel deemed just and proper. In addition Claimant requested the panel order that all records relating to his departure be expunged from Kim's registration records maintained by the Central Registration Depository ("CRD").

Respondent requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

Bellco Credit Union and Bellco First Financial Services, Inc., are not members of NASD. Bellco Credit Union and Bellco First Financial Services, Inc., did not voluntarily submit to NASD arbitration, nor were contracts to arbitrate disputes with Bellco Credit Union and Bellco First Financial Services, Inc., presented. Therefore, Bellco Credit Union and Bellco First Financial Services, Inc., are not compelled by NASD rules to arbitrate disputes in this forum. In the absence of Bellco Credit Union's and Bellco First Financial Services, Inc.'s voluntary submission, NASD does not have jurisdiction over these parties.

On or about October 4, 2005, the panel deferred ruling on CUSO's Motion to Dismiss and stated that it would consider the Motion at the final arbitration hearing.

Based on the stipulation from both parties not to oppose the amended the Statement of Claim or Statement of Answer, the panel accepted the amended pleadings on or about January 25, 2006.

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. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with NASD Dispute Resolution ("NASD").

### **AWARD**

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

1. Respondent, CUSO Financial Services, L.P., is liable for and shall pay to Claimant, Thomas Y. Kim, compensatory damages of Five Hundred Thirty Nine Thousand Dollars and No Cents (\$539,000.00);
2. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, including expungement, are denied with prejudice; and
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys' fees.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee = \$ 600

#### **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. In this matter, the member firm is CUSO Financial Services, L.P.

Member surcharge = \$ 3,750  
Pre-hearing process fee = \$ 750  
Hearing process fee = \$ 5,500

#### **Forum Fees and Assessments**

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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:

Three (3) Pre-hearing sessions with Panel x \$ 1,200 = \$ 3,600

Pre-hearing conferences:      January 19, 2005      1 session  
   June 15, 2005      1 session  
   July 20, 2005      1 session

Nine (9) Hearing sessions with Panel x \$ 1,200 = \$ 10,800

Hearing Dates:              February 6, 2006              2 sessions  
   February 7, 2006              2 sessions  
   February 8, 2006              2 sessions  
   February 9, 2006              2 sessions  
   February 10, 2006              1 session

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Total Forum Fees = \$ 14,400

The Arbitration Panel has assessed \$ 1,800 of the forum fees to Thomas Y. Kim.

The Arbitration Panel has assessed \$ 12,600 of the forum fees to CUSO Financial Services, L.P.

**FEE SUMMARY**

Claimant, Thomas Y. Kim, is liable for:

Initial Filing Fee	= \$ 600
<u>Forum Fees</u>	<u>= \$ 1,800</u>
Total Fees	= \$ 2,400
<u>Less payments</u>	<u>= \$ 1,800</u>
Balance Due NASD Dispute Resolution	= \$ 600

Respondent, CUSO Financial Services, L.P., is liable for:

Member Fees	= \$ 10,000
<u>Forum Fees</u>	<u>= \$ 12,600</u>
Total Fees	= \$ 22,600
<u>Less payments</u>	<u>= \$ 10,000</u>
Balance Due NASD Dispute Resolution	= \$ 12,600

**All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code of Arbitration**

**ARBITRATION PANEL**

Peter D. Bowes - Public Arbitrator, Presiding Chair  
Mary C. Davis - Public Arbitrator  
William A. Conklin - Non-Public Arbitrator

Concurring Arbitrators:

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Peter D. Bowes  
Public Arbitrator, Presiding Chair

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Signature Date

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Mary C. Davis  
Public Arbitrator

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Signature Date

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William A. Conklin  
Non-Public Arbitrator

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Signature Date

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*2/21/06*  
Date of Service (NASD use only)

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Concurring Arbitrators:



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Peter D. Bowes  
Public Arbitrator, Presiding Chair

7-16-06  
Signature Date

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Mary C. Davis  
Public Arbitrator

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Non-Public Arbitrator

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Peter D. Bowes  
Public Arbitrator, Presiding Chair

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Signature Date

*Mary C. Davis*

*2/16/05*

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Mary C. Davis  
Public Arbitrator

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Signature Date

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William A. Conklin  
Non-Public Arbitrator

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Signature Date

*2/21/06*

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Public Arbitrator, Presiding Chair

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Public Arbitrator

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William A. Conklin  
Non-Public Arbitrator

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2-16-06  
Signature Date

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2/21/06  
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