

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant
U.S. Bancorp Investments, Inc.

Case Number: 16-01228

vs.

Respondent
Thomas Bradford Bennett

Hearing Site: San Francisco, California

Nature of the Dispute: Member vs. Associated Person

REPRESENTATION OF PARTIES

For Claimant U.S. Bancorp Investments, Inc.: Babak Yousefzadeh, Esq. and John D. Ellis, Esq., Sheppard Mullin Richter & Hampton LLP, San Francisco, California.

Respondent Thomas Bradford Bennett appeared pro se.

CASE INFORMATION

Statement of Claim filed on or about: April 29, 2016.
Claimant signed the Submission Agreement: April 29, 2016.

Statement of Answer filed by Respondent Thomas Bradford Bennett on or about: June 23, 2016.
Thomas Bradford Bennett signed the Submission Agreement: June 23, 2016.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: breach of contract and unjust enrichment. The causes of action relate to a Repayment Agreement executed by Respondent on or about June 26, 2014.

Unless specifically admitted in the Statement of Answer, Respondent denied the allegations made in the Statement of Claim.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. An Award in its favor in the amount of \$104,000.00;
2. Attorneys' fees and costs;

3. Pre- and post-judgment interest; and
4. Any additional relief the Panel deems just and appropriate.

Respondent requested that his debt to Claimant be considered forgiven.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator acknowledges that he read the pleadings and other materials filed by the parties.

Via a joint request dated November 17, 2016, the parties agreed to an explained decision pursuant to Rule 13904(g) of the Code of Arbitration Procedure (the "Code"). As a part of the agreement, Claimant agreed to pay the \$400.00 explained decision fee.

FINDINGS

The parties hereto have requested an Explained Decision. Claimant (USBI) commenced this matter in order to recover a payment owed by Respondent (a former USBI financial advisor), pursuant to the terms of the written contract executed by Respondent on or about June 26, 2014 (the "Repayment Agreement"). Respondent executed the Repayment Agreement in connection with his receipt of \$104,000.00 cash advance (the "Cash Advance") paid by USBI on or about July 31, 2014. Under the terms of the Repayment Agreement, Respondent agreed to repay all of the Cash Advance if he was involuntarily terminated for (among other things) violation of USBI's compliance policies or procedures, or unsatisfactory job performance prior to the expiration of 12 months after the receipt of the Cash Advance. Having received his Cash Advance on July 31, 2014, Respondent was terminated approximately 11 months later on June 25, 2015, for poor job performance and for violation of USBI's compliance policies. Pursuant to the Repayment Agreement, Respondent was obligated to repay the Cash Advance he received no later than 30 days after his termination.

Prior to commencing these arbitration proceedings, USBI made efforts to recover from Respondent the \$104,000.00 he owed under the terms of the Repayment Agreement. Respondent has refused to repay USBI any of the Cash Advance. USBI therefore filed a Statement of Claim on April 29, 2016, (the "Statement of Claim") setting forth claims for breach of contract, unjust enrichment, and attorneys' fees. Claimant requests that the Arbitrator find that Respondent is contractually bound to repay USBI the \$104,000.00 and award this amount to USBI, in addition to recoverable attorneys' fees and interest and costs incurred.

Respondent was hired by USBI to work as a financial advisor in Walnut Creek, California, on or about June 30, 2014. In connection with his hiring, USBI provided Respondent with an offer letter, dated June 13, 2014, that set forth certain terms and conditions of Respondent's employment ("Offer Letter"). Pursuant to Respondent's Offer Letter, Respondent was eligible to receive, and USBI offered to provide Respondent with, a voluntary Cash Advance in the amount of \$104,000.00. The Offer Letter made clear that acceptance of the Cash Advance was not a condition of employment, and that Respondent was welcome to accept or reject it; but to the extent Respondent opted to accept the Cash Advance, the Offer Letter clearly stated that the

Cash Advance was subject to the terms and conditions set forth in the separate Repayment Agreement. Respondent's Offer Letter further required that Respondent sign and return the Repayment Agreement in order to be eligible to receive the Cash Advance.

Respondent signed and returned the Repayment Agreement to USBI on or about June 26, 2014. Thereafter, pursuant to the terms of the Offer Letter and Repayment Agreement, USBI paid Respondent the \$104,000.00 Cash Advance, minus applicable tax withholdings, on or about July 31, 2014.

Respondent claims that Marv Schofield, USBI's Regional Manager for Northern California, told him that he "may consider the loan forgiven." Mr. Schofield testified that he never told Respondent his entire repayment obligations were forgiven. Rather, Mr. Schofield told Respondent he was only a few days away from earning the first one-third of the Cash Advance (he was in fact over a month away), and therefore told Respondent that he would not have to repay one-third of the Cash Advance (i.e., for the first year).

The Arbitrator is of the opinion that the testimony of Mr. Schofield is accurate and that the testimony of Respondent is not credible.

The Arbitrator accordingly finds the following:

1. That Respondent owes the amount of \$104,000.00 in compensatory damages to USBI due to breach of contract and orders him to repay that amount to USBI.
2. USBI is entitled to attorneys' fees in the amount of \$6,000.00 pursuant to the Repayment Agreement.
3. In addition, USBI is entitled to interest at the rate of 10% from July 27, 2015, until December 13, 2016.
4. Arbitrator makes no finding as to USBI's unjust enrichment claim.
5. The Arbitrator further finds that the termination of Respondent was justified.

AWARD

After considering the pleadings and the testimony and evidence presented at the hearing, the Arbitrator 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 \$104,000.00 in compensatory damages.
2. Respondent is liable for and shall pay to Claimant interest on the above-stated sum at the rate of 10% per annum from July 27, 2015, through and including December 13, 2016.

3. Respondent is liable for and shall pay to Claimant the sum of \$6,000.00 in attorneys' fees pursuant to the Repayment Agreement.
4. Other than forum fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter.
5. Any and all claims for relief not specifically addressed herein, including costs, are denied.

FEES

Pursuant to the Code, 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

**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 firms that employed the associated person at the time of the event giving rise to the dispute. Accordingly, as a party, U.S. Bancorp Investments, Inc. is assessed the following:

Member Surcharge = \$1,700.00
Member Process Fee = \$3,250.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

November 15 and 16, 2016, adjournment by Claimant and Respondent = \$ 450.00
December 8 and 9, 2016, adjournment by Claimant = Waived

Total Adjournment Fees = \$ 450.00

1. The Arbitrator has assessed \$225.00 of the adjournment fees to Claimant.
2. The Arbitrator has assessed \$225.00 of the adjournment fees to Respondent.

Hearing Session Fees and Assessments

The Arbitrator 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), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session with a single arbitrator @ \$ 450.00/session = \$ 450.00
Pre-hearing conference: September 6, 2016 1 session
One (1) hearing session @ \$ 450.00/session = \$ 900.00

Hearing Date: December 13, 2016 2 sessions

Total Hearing Session Fees = \$1,350.00

1. The Arbitrator has assessed \$675.00 of the hearing session fees to Claimant.
2. The Arbitrator has assessed \$675.00 of the hearing session fees to Respondent.

Explained Decision Fees

Fees apply if the Chairperson drafts an explained decision based on the parties' timely received joint request for an explained decision.

Pursuant to the parties' November 17, 2016 agreement for an explained decision, the Arbitrator has assessed the \$400.00 explained decision fee to Claimant.

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

ARBITRATOR

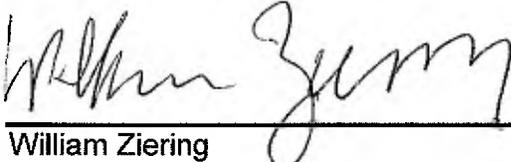
William Ziering

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Sole 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.

Arbitrator's Signature



William Ziering
Sole Public Arbitrator



Signature Date

January 6, 2017
Date of Service (For FINRA Office of Dispute Resolution office use only)