

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant
Raymond, James & Associates, Inc.

Case Number: 18-04011

vs.

Respondent
Gregory D. Clark

Hearing Site: Miami, Florida

Nature of the Dispute: Member vs. Associated Person

REPRESENTATION OF PARTIES

For Claimant Raymond, James & Associates, Inc. ("Claimant"): Dominique E. Heller, Esq., Wiand Guerra King P.A., Tampa, Florida.

Respondent Gregory D. Clark ("Respondent") appeared pro se.*

*Solely at the hearing, Jason Abraham, a non-attorney representative, appeared on behalf of Claimant. Please see the Findings of Fact section of this award for additional information.

CASE INFORMATION

Statement of Claim filed on or about: November 27, 2018.
Claimant signed the Submission Agreement: November 20, 2018.

Respondent did not file a Statement of Answer.
Respondent signed the Submission Agreement: May 22, 2019.

CASE SUMMARY

In the Statement of Claim, Claimant asserted breach of contract as the cause of action. Claimant alleges that Respondent breached the terms of a settlement agreement entered into by the parties, on or about August 25, 2017, related to repayment of a promissory note that was entered into by the parties while Respondent was employed with Claimant and that became due upon Respondent's separation from employment with Claimant.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested \$206,000.00, for the outstanding principal balance due and owing under the settlement agreement; annual pre-judgment interest accruing at the Florida legal rate pursuant to Florida Statutes § 55.03(3) from August 20, 2018 until the award is paid in full; attorneys' fees and costs; and any and all further relief the Panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

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

On or about February 13, 2019, Claimant filed a Motion to Bar Presentation of Defenses and Facts ("Motion to Bar"). In its Order dated February 28, 2019, the Panel granted the Motion to Bar without prejudice to Respondent's opportunity to appear and to move for relief. On or about May 22, 2019, Respondent filed a Motion for Reconsideration of the Panel's February 28, 2019 Order ("Motion for Reconsideration"). On or about May 30, 2019, Claimant filed an Opposition to the Motion for Reconsideration. In its Order dated July 1, 2019, the Panel denied, without prejudice, the Motion for Reconsideration.

The Panel has provided an explanation of their decision in this award. The explanation is for the information of the parties only and is not precedential in nature.

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

FINDINGS OF FACT

On the record at the hearing, Respondent endeavored to offer his own testimony. Claimant objected. Pursuant to the Panel's Order barring Respondent from presenting any defenses and facts and in keeping with the fact that Respondent never filed a Statement of Answer, witness list, or exhibit list, Claimant's objection was sustained. Respondent's representative was permitted to make a proffer of the testimony Respondent would have presented had Claimant's objection been overruled. In brief, that proffer was mainly as to the circumstances of the promissory note and settlement and intended to prove that it was inequitable to permit Claimant to both retain Respondent's book of business and also enforce the promissory loan agreement. Respondent's representative was also permitted to provide opening and closing statements and cross-examine Claimant's witness.

The Panel notes that even if there were not valid procedural reasons to bar the presentation of counterclaims and defenses, the proffered evidence would not have changed the Panel's ruling on the merits. The parties' settlement agreement of August 25, 2017 was entered after Respondent had advice of counsel, it provided Respondent with a discount, and it contained a general release in favor of Claimant.

AWARD

After considering the pleadings and 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 \$206,000.00 in compensatory damages.
2. Respondent is liable for and shall pay to Claimant interest on the above-stated sum, pursuant to Florida Statutes § 55.03, from August 20, 2018 through and including the date this Award is paid in full.
3. Other than forum fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter.
4. 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
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**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, Claimant is assessed the following:

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

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

One (1) pre-hearing session with the Panel @ \$1,125.00/session	= \$ 1,125.00
Pre-hearing Conference: March 13, 2019	1 session

One (1) hearing session @ \$1,125.00/session	= \$ 1,125.00
Hearing Date: December 2, 2019	1 session

Total Hearing Session Fees	= \$ 2,250.00
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The Panel has assessed \$1,125.00 of the hearing session fees to Claimant.

The Panel has assessed \$1,125.00 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Will Murphy	-	Public Arbitrator, Presiding Chairperson
Michael Lau	-	Public Arbitrator
Brett Matthew Logan	-	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

Will Murphy

Will Murphy
Public Arbitrator, Presiding Chairperson

12/27/2019

Signature Date

Michael Lau

Michael Lau
Public Arbitrator

12/27/2019

Signature Date

Brett Matthew Logan

Brett Matthew Logan
Non-Public Arbitrator

12/27/2019

Signature Date

December 27, 2019

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