

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant
David Allen

Case Number: 16-01469

vs.

Respondents
Avenir Financial Group
Intercoastal Capital Markets, Inc.
Michael Clements

Hearing Site: New York, New York

Nature of the Dispute: Associated Person vs. Members and Associated Person

REPRESENTATION OF PARTIES

Claimant David Allen appeared pro se.

For Respondent Avenir Financial Group ("Avenir"): Michael Clements, Avenir Financial Group, Wellington, Florida.

Respondent Intercoastal Capital Markets, Inc. did not enter an appearance in this matter.

Respondent Michael Clements ("Clements") appeared pro se.

CASE INFORMATION

Statement of Claim filed on or about: May 24, 2016.

Amended Statement of Claim filed on or about: June 13, 2016.

Answer to Counterclaim filed on or about: October 6, 2016.

Claimant signed the Submission Agreement: June 13, 2016.

Joint Statement of Answer filed by Respondents Avenir and Clements and Counterclaim by Respondent Clements on or about: August 13, 2016.

Avenir signed the Submission Agreement: August 5, 2016.

Clements signed the Submission Agreement: June 23, 2016.

Intercoastal Capital Markets, Inc. did not submit a Statement of Answer or sign the Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: fraudulent filing of Form U5, defamation, and harassment.

Unless specifically admitted in the Statement of Answer, Respondents Avenir and Clements denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

In the Counterclaim, Respondent Clements asserted the following causes of action: fraud, supervisory gross negligence, theft of company funds, regulatory violations, and causing significant regulatory and financial harm.

Unless specifically admitted in the Answer, Claimant denied the allegations made in the Counterclaim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim and Amended Statement of Claim, Claimant requested compensatory damages in the amount of \$25,000.00 plus interest, punitive damages, attorneys' fees, costs, sanctions for Respondents' fraudulent misuse of FINRA's CRD system, and expungement of his Form U5.

At the close of the hearing, Claimant requested expungement of his Form U5, dismissal of the Counterclaim, damages in a range between \$1.00 and \$1,000,000.00, and an explained decision.

In the Statement of Answer, Respondents Avenir and Clements requested that Claimant's claims be denied in their entirety.

In the Counterclaim, Respondent Clements requested expungement of this matter from his CRD records, compensatory damages in an amount no less than \$125,000.00 plus interest, punitive damages, attorneys' fees, costs, and IRS penalties. Respondent Clements also requested further actions for Claimant's embezzlement of company funds, calculated fraudulent activity and unauthorized misuse of the CRD system, and recommendation for an enforcement referral.

At the close of the hearing, Respondent Clements requested compensatory damages in the amount of \$115,000.00, punitive damages in the amount of \$115,000.00, interest, hearing fees, dismissal of Claimant's claims pertaining to defamation, and disciplinary referral.

In the Answer to the Counterclaim, Claimant requested that the Counterclaim be dismissed in its entirety, costs, a finding that Respondent Clements' claims are false, and expungement of his Form U5.

OTHER ISSUES CONSIDERED AND DECIDED

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

In the Amended Statement of Claim, Claimant removed Respondent Intercoastal Capital Markets, Inc. as a party in this matter.

At the conclusion of Respondent Clements' case-in-chief, Claimant made a Motion to Dismiss the Counterclaim and Respondents Avenir and Clements opposed the motion. After due deliberation, the Panel denied the motion.

Claimant made a Motion for Sanctions based on discovery abuse by Respondents Avenir and Clements, specifically for failure to produce materials ordered by the Chairperson on behalf of the Panel. While the Panel determined that sanctions were not appropriate, it did take Respondents' Avenir and Clements' failure to provide all required materials into consideration in weighing the evidence produced by the parties.

The Panel denied Claimant's request for an explained decision. However, as a brief explanation, the Panel concluded that New York State court decisions prohibited claims for defamation stemming from Form U5 filing. In addition, the Panel found that Respondent Clements had not shown a basis for the Counterclaims he brought against Claimant.

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.

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. Claimant's request for compensatory damages is denied.
2. Claimant's request for sanctions is denied.
3. Respondent Clements' Counterclaims are denied in their entirety.
4. Respondent Clements' request for expungement is denied.
5. Respondent Clement's request for further actions and disciplinary referral is denied.
6. The Panel recommends the expungement of the "Yes" answers to Questions 7B, and 7F(1)(2) & (3) on the Forms U5 filed by Avenir Financial Group on March 12, 2016 and May 2, 2016 from registration records for Claimant David Allen (CRD # 2500427) maintained by the Central Registration Depository ("CRD"). In addition, the Panel recommends that the current Reason for Termination be expunged and changed to "Voluntary" and the Termination Explanation appear blank. These

recommendations also apply to any other disclosures concerning this event, including, but not limited to, the Forms U5 filed by Avenir Financial Group on January 28, 2016, February 6, 2016, February 17, 2016, and February 26, 2016, and the amended Form U4 filed by the firm Allen & Noonan on April 5, 2017. The above recommendations are based on the defamatory nature of the information.

The registration records are not automatically amended to include the changes indicated above. Claimant David Allen must forward a copy of this Award to FINRA's Registration and Disclosure Department for the amendments to be incorporated into the registration records.

7. Any and all claims for relief not specifically addressed herein, including punitive damages and 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	= \$ 425.00
Counterclaim Filing Fee	= \$ 1,425.00

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

FINRA Office of Dispute Resolution previously deferred the Claimant's filing fee. Upon conclusion of the matter, the Panel determined to waive the non-refundable filing fee of \$125.00.

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, Avenir Financial Group is assessed the following:

Member Surcharge	= \$ 450.00
Member Process Fee	= \$ 3,250.00

Accordingly, as a party, Intercoastal Capital Markets, Inc. is assessed the following:

Member Surcharge	= \$ 450.00
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Postponement Fees

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

March 27, 2017 postponement by Respondents Avenir and Clements WAIVED

Last Minute Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

March 27, 2017 postponement by Respondents Avenir and Clements WAIVED

Discovery-Related Motion Fee

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

One (1) decision on a discovery-related motion on the papers
with one (1) arbitrator @ \$200.00/decision =\$200.00

Claimant submitted one (1) discovery-related motion
Total Discovery-Related Motion Fees =\$200.00

1. The Panel has assessed \$40.00 of the discovery-related motion fees to Claimant.
2. The Panel has assessed \$160.00 of the discovery-related motion fees jointly and severally to Respondents Avenir and Clements.

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 a single arbitrator @ \$450.00/session =\$ 900.00
Pre-hearing conferences: January 5, 2017 1 session
January 26, 2017 1 session

One (1) pre-hearing session with the Panel @ \$1,125.00/session =\$ 1,125.00
Pre-hearing conference: November 22, 2016 1 session

Fourteen (14) hearing sessions @ \$1,125.00/session =\$15,750.00
Hearing Dates: March 21, 2017 2 sessions
March 22, 2017 2 sessions
March 23, 2017 2 sessions
March 24, 2017 2 sessions
May 11, 2017 2 sessions
May 12, 2017 2 sessions
May 15, 2017 2 sessions

Total Hearing Session Fees =\$17,775.00

1. The Panel has assessed \$3,555.00 of the hearing session fees to Claimant.
2. The Panel has assessed \$14,220.00 of the hearing session fees jointly and severally to Respondents Avenir and Clements.

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

ARBITRATION PANEL

Howard J. Stiefel	-	Public Arbitrator, Presiding Chairperson
Daniel Robbins	-	Public Arbitrator
Joan Marie Chiusano	-	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



Howard J. Stiefel
Public Arbitrator, Presiding Chairperson

6/14/17

Signature Date

Daniel Robbins
Public Arbitrator

Signature Date

Joan Marie Chiusano
Non-Public Arbitrator

Signature Date

June 15, 2017

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

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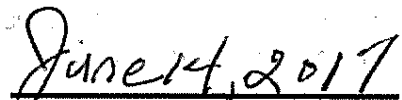
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