

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimants

Richard Joseph DellaRusso
Mark Lawrence Sullivan

Case Number: 17-01406

vs.

Respondent

Credit Suisse Securities (USA) LLC

Hearing Site: New York, New York

Nature of the Dispute: Associated Persons vs. Member

REPRESENTATION OF PARTIES

For Claimants Richard Joseph DellaRusso (“DellaRusso”), and Mark Lawrence Sullivan (“Sullivan”): Barry Lax, Esq., Lax & Neville LLP, New York, New York.

For Respondent Credit Suisse Securities (USA) LLC: David Pegno, Esq., Dewey Pegno & Kramarsky LLP, New York, New York.

CASE INFORMATION

Joint Statement of Claim filed on or about: April 30, 2017.

Answer to Counterclaim filed on or about: August 24, 2017.

Amended Statement of Claim filed on or about: September 14, 2018.

Richard Joseph DellaRusso signed the Submission Agreement: April 27, 2017.

Mark Lawrence Sullivan signed the Submission Agreement: April 27, 2017.

Statement of Answer and Counterclaim filed by Respondent on or about: July 21, 2017

Answer to Amended Statement of Claim and Amended Counterclaim filed on or about:
December 14, 2018.

Credit Suisse Securities (USA) LLC signed the Submission Agreement: July 21, 2017.

CASE SUMMARY

Claimants asserted the following causes of action: violations of New York labor law; breach on contract; breach of implied covenant of good faith and fair dealing; conversion; fraud; unjust enrichment; false and misleading form U5.

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

In its Counterclaims, Respondent asserted the following causes of action: breach of contract (notes); breach of contract (compensation overpayment); unjust enrichment; breach of contract (breach of handbook, master share plan, and operative award certificates); breach of fiduciary duty; unfair competition and misappropriation of trade secrets.

Unless specifically admitted in their Answer to Counterclaim, Claimants denied the allegations made in the Counterclaims and asserted various affirmative defenses

RELIEF REQUESTED

In the Statement of Claim and Amended Statement of Claim, Claimants requested:

- a. monetary damages equal to their unpaid earned deferred compensation in an amount to be proved at the hearing but not less than \$2.5 million;
- b. attorneys' fees and costs as required by NYLL § 198(1-a);
- c. liquidated damages in an amount equal to the unpaid deferred compensation as required by NYLL § 198(1-a);
- d. prejudgment interest in the amount of 9 percent per annum as required by NYLL § 198(1-a);
- e. interest to run as required by NYLL § 198(1-a);
- f. amendment of Claimants' Form U-5s to reflect termination for "other business closure", and
- g. such other relief as the Panel deems just, equitable and proper.

In the Statement of Answer and Counterclaims, Respondent requested:

As against DellaRusso:

- (i) full repayment of the outstanding principle balance and loan arrears of \$448,516.41, due under the terms of the Offer Letter and the Note, together with accrued but unpaid interest, collection costs, and attorneys' fees calculated as of the time of actual payment (amounts which continue to increase during the pendency of this arbitration);

As against Sullivan:

- (ii) full repayment of the outstanding principle balance and loan arrears of \$232,317.71, due under the terms of the Offer Letter and the Note, together with accrued but unpaid interest, collection costs, and attorneys' fees calculated as of the time of actual payment (amounts which continue to increase during the pendency of this arbitration);
- (iii) full repayment of the overpayment of compensation that was advanced to him in the amount of \$6,462.00, plus applicable interest;

As against DellaRusso and Sullivan:

- (iv) damages sustained as a result of Claimants' breaches as set forth above;
- (v) dismissing the Statement of Claim in its entirety, with prejudice; and
- (vi) such other and further relief as the Arbitrator deems just and proper.

In the Answer to the Counterclaims, Claimants requested that the Panel issue an award denying Respondent's Counterclaims in their entirety with costs and attorneys' fees and providing for the relief requested in the Statement of Claim and Amended Statement of Claim.

In the Answer to the Amended Statement of Claim, Respondent requested the damages set forth above and:

As against DellaRusso:

- (i) full repayment of the outstanding principal balance and loan arrears of \$10,165.90;

As against DellaRusso and Sullivan:

- (ii) damages sustained as a result of Claimants' breaches as set forth above;
- (iii) dismissing the Statement of Claim in its entirety, with prejudice; and
- (iv) such other and further relief as 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 August 28, 2018, Claimants filed a Motion to Amend the Statement of Claim. On August 30, 2018, Respondent filed an Opposition to the Motion to Amend the Statement of Claim. On September 4, 2018, Claimants filed a Reply in support of their Motion to Amend the Statement of Claim. By Order dated September 11, 2018, the Panel granted Claimants Motion to Amend the Statement of Claim. The Statement of Claim was amended to add fraud as a cause of action.

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. Respondent is liable for and shall pay to Claimant Richard J. DellaRusso the sum of \$818,903.00 in compensatory damages.

2. Respondent is liable for and shall pay to Claimant Richard J. DellaRusso interest on the above-stated sum in #1 at the rate of 4% per annum from October 21, 2015 through and including date of the award.
3. Respondent is liable for and shall pay to Claimant Richard J. DellaRusso the sum of \$185,929.00 in attorneys' fees pursuant to New York Labor Law § 198 (1-a).
4. Respondent is liable for and shall pay to Claimant Mark L. Sullivan the sum of \$416,914.00 in compensatory damages.
5. Respondent is liable for and shall pay to Claimant Mark L. Sullivan interest on the above-stated sum in #4 at the rate of 4% per annum from October 21, 2015 through and including date of the award.
6. Respondent is liable for and shall pay to Claimant Mark L. Sullivan the sum of \$185,929.00 in attorneys' fees pursuant to New York Labor Law § 198 (1-a).
7. Respondent's Counterclaim is denied in its entirety.
8. The Panel recommends the expungement of the Reason for Termination in Section 3 of Claimant Mark L. Sullivan's (CRD# 2531982) Form U5 filed on December 21, 2015, by Credit Suisse Securities (USA) LLC and maintained by the Central Registration Depository ("CRD").

The Reason for Termination should be changed to "Other" and the Termination Explanation shall be changed to "Terminated without cause." These recommendations shall apply to all subsequent disclosures concerning this event.

The above recommendations are made with the understanding that, Claimant Mark L. Sullivan (CRD# 2531982) must obtain confirmation of this award from a court of competent jurisdiction before the CRD will execute the expungement directive.

The Form U5 is not automatically amended to include the changes indicated above. Claimant Mark L. Sullivan must forward a copy of the Court Order to FINRA's Registration and Disclosure Department for the amendments to be incorporated into the registration records.

9. The Panel recommends the expungement of the Reason for Termination in Section 3 of Claimant Richard J. DellaRusso's (CRD# 1976256) Form U5 filed on December 21, 2015 by Credit Suisse Securities (USA) LLC and maintained by the Central Registration Depository ("CRD").

The Reason for Termination should be changed to "Other" and the Termination Explanation shall be changed to "Terminated without cause." These recommendations shall apply to all subsequent disclosures concerning this event.

The above recommendations are made with the understanding that, Claimant Richard J. DellaRusso (CRD# 1976256) must obtain confirmation of this award from

a court of competent jurisdiction before the CRD will execute the expungement directive.

The Form U5 is not automatically amended to include the changes indicated above. Claimant Richard J. DellaRusso must forward a copy of the Court Order to FINRA's Registration and Disclosure Department for the amendments to be incorporated into the registration records.

10. Any and all claims for relief not specifically addressed herein 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	= \$ 2,000.00
Counterclaim Filing Fee	= \$ 2,550.00

**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 persons at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent Credit Suisse Securities (USA) LLC is assessed the following:

Member Surcharge	= \$ 3,025.00
Member Process Fee	= \$ 6,175.00

Postponement Fees

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

October 29-31, 2018 and November 1-2, 2018, postponement by parties.	= \$1,400.00
August 26-29, 2019, postponement by parties.	= \$1,400.00

Total Postponement Fees	= \$2,800.00
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The Panel has assessed \$1,400.00 of the postponement fees jointly and severally to Claimants.

The Panel has assessed \$1,400.00 of the postponement fees to Respondent.

Last-Minute Cancellation Fees

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

October 29-31, 2018 & November 1-2, 2018, postponement requested by parties. = \$1,800.00
August 26-29, 2019, postponement requested by parties = \$1,800.00

Total Last-Minute Cancellation Fees = \$3,600.00

The Panel has assessed \$1,800.00 of the last-minute cancellation fees jointly and severally to Claimants.

The Panel has assessed \$1,800.00 of the last-minute cancellation fees to Respondent.

Discovery-Related Motion Fee

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

Three (3) decisions on discovery-related motions on the papers with one (1) arbitrator @ \$200.00/decision = \$ 600.00

Total Discovery-Related Motion Fees = \$ 600.00

The Panel has assessed \$300.00 of the discovery-related motion fees jointly and severally to Claimants.

The Panel has assessed \$300.00 of the discovery-related motion fees to Respondent.

Contested Motion for Issuance of Subpoena Fee

Fees apply for each decision on a contested motion for the issuance of a subpoena.

Two (2) decisions on a contested motion for the issuance of a subpoena with one arbitrator @ \$250.00 = \$ 500.00

Total Contested Motion for Issuance of Subpoena Fee = \$ 500.00

The Panel has assessed \$250.00 of the contested motion for issuance of subpoenas fees jointly and severally to Claimants.

The Panel has assessed \$250.00 of the contested motion for issuance of subpoenas 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:

Three (3) pre-hearing sessions with a single arbitrator @ \$450.00/session =\$1,350.00
Pre-hearing conferences: August 29, 2018 1 session
September 17, 2018 1 session
October 5, 2018 1 session

Three (3) pre-hearing sessions with the Panel @ \$1,400.00/session =\$4,200.00
Pre-hearing conferences: October 19, 2017 1 session
October 19, 2018 1 session
October 25, 2018 1 session

Thirty-Five (35) hearing sessions @ \$1,400.00/session =\$49,000.00
Hearing Dates: November 26, 2018 2 sessions
November 27, 2018 2 sessions
November 28, 2018 2 sessions
November 29, 2018 2 sessions
November 30, 2018 2 sessions
January 22, 2019 2 sessions
January 23, 2019 1 session
January 24, 2019 2 sessions
January 25, 2019 2 sessions
April 1, 2019 2 sessions
April 5, 2019 2 sessions
April 15, 2019 2 sessions
April 16, 2019 2 sessions
April 17, 2019 2 sessions
April 18, 2019 2 sessions
August 13, 2019 1 session
September 23, 2019 2 sessions
September 25, 2019 1 session
September 27, 2019 2 sessions

Total Hearing Session Fees =\$54,550.00

The Panel has assessed \$13,637.50 of the hearing session fees to Claimant Richard Davis DellaRusso.

The Panel has assessed \$13,637.50 of the hearing session fees to Claimant Mark Lawrence Sullivan.

The Panel has assessed \$27,275.00 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Mary Lou McGanney	-	Public Arbitrator, Presiding Chairperson
Robert E. Anderson	-	Public Arbitrator
Jay F. Frascella	-	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

Mary Lou McGanney

Mary Lou McGanney
Public Arbitrator, Presiding Chairperson

11/08/2019

Signature Date

Jay F. Frascella

Jay F. Frascella
Non-Public Arbitrator

11/09/2019

Signature Date

Dissenting Arbitrator's Signature

Robert E. Anderson

Robert E. Anderson
Public Arbitrator

11/11/2019

Signature Date

Arbitrator Robert E. Anderson dissents from the majority Award in favor of the Claimants. He does not believe either the facts or the law adduced during the course of the proceedings support a recovery.

November 14, 2019

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