

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant
Christopher Herridge Rusk

Case Number: 16-03411

vs.

Respondent
First Republic Securities Company, LLC

Hearing Site: New York, New York

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant Christopher Herridge Rusk: Brian J. Neville, Esq. and Mary Grace White, Esq., Lax & Neville LLP, New York, New York.

For Respondent First Republic Securities Company, LLC: Mauricio S. Beugelmans, Esq., Schiff Hardin LLP, San Francisco, California.

CASE INFORMATION

Statement of Claim filed on or about: November 21, 2016.

Claimant's Answer to Counterclaim filed on or about: April 4, 2017.

Claimant's Amended Statement of Claim filed on or about: May 16, 2017.

Claimant's Amended Answer to Counterclaim filed on or about: July 5, 2017.

Christopher Herridge Rusk signed the Submission Agreement: November 16, 2016.

Statement of Answer and Counterclaim filed by Respondent on or about: January 17, 2017.

Statement of Answer with Counterclaim to Amended Statement of Claim filed on or about: June 15, 2017.

First Republic Securities Company, LLC signed the Submission Agreement: January 17, 2017.

CASE SUMMARY

Claimant asserted the following causes of action: abuse of the Form U5, slander and libel; tortious interference with business relationships; breach of contract; and breach of industry standards/standards of commercial honor and principles of trade.

In his Amended Statement of Claim, Claimant asserted the following causes of action: violation of New York Labor Law; breach of contract; breach of the implied covenant of good faith and fair dealing; abuse of the Form U5, slander and libel; and tortuous interference with business relationships.

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

In its Counterclaim, Respondent asserted the following cause of action: breach of contract.

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

RELIEF REQUESTED

In the Statement of Claim, Claimant requested payment in an amount to be determined at hearing for all of his lost wages and compensation in connection with his wrongful termination; expungement of the language on his Form U5; interest until the date that the award is fully paid and satisfied; that the Panel order his brokerage account unfrozen and order his recruiting Promissory Note forgiven; punitive damages; expenses, attorneys' fees, and disbursements; and for such other further relief as the Panel deems just, equitable, and proper.

In the Amended Statement of Claim, Claimant requested unpaid wages, lost wages and compensation in connection with his termination and Respondent's defamation in an amount to be determined at hearing, but in no event less than \$153,882.69; attorneys' fees and costs; prejudgment interest at the statutory rate of 9% per annum; post judgment interest to run at the statutory rate of 9%; expungement of his Form U5; that the Panel order Respondent to turn over \$50,000.00 in his brokerage account; punitive damages and for such other further relief as the Panel deems just, equitable, and proper.

In the Statement of Answer and Amended Statement of Answer, Respondent requested that the Panel deny Claimant's claims for expungement and monetary damages in their entirety and dismiss Claimant's Statement of Claim with prejudice.

In the Counterclaim, Respondent requested that the Panel award Respondent the sum of \$142,788.46, plus interest at the statutory rate of 9% per year; all costs it incurred to enforce Claimant's obligations under the Promissory Note, including an award of reasonable attorneys' fees; and such other and further relief as the Panel deems just and proper.

In his Answer to Counterclaim, Claimant requested that the Panel dismiss Respondent's Counterclaims with prejudice; award Claimant an offset to the Promissory Note pursuant to his Agreement with Respondent; award Claimant compensatory damages for all damages sustained as a result of Respondent's wrongdoing; order Respondent to turn over the approximately \$50,000.00 in his account; order expungement of his Form U5; award Claimant interest until the date of the award; costs, attorneys' fees, and expenses; and such additional equitable or other relief as deemed appropriate by the Panel.

In his Amended Answer to Counterclaim, Claimant requested that the Panel dismiss Respondent's Counterclaims with prejudice; award Claimant an offset to the Promissory Note pursuant to his Agreement with Respondent and a lump sum severance payment of \$153,882.69; award Claimant compensatory damages for all damages sustained as a result of Respondent's wrongdoing; order Respondent to turn over the approximately \$50,000.00 in his account; order expungement of his Form U5; award Claimant interest until the date of the award; costs, attorneys' fees, and expenses; and such additional equitable or other relief as deemed appropriate by the Panel.

OTHER ISSUES CONSIDERED AND DECIDED

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

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 the sum of \$727,000.00 in compensatory damages on Claimant's wrongful termination claim plus interest at the rate of 9% per annum from the date of the award until the award is paid in full.
2. Respondent is liable for and shall pay to Claimant the sum of \$49,194.00 in compensatory damages on Claimant's request for the return of his brokerage account plus interest at the rate of 9% per annum from the date of the award until the award is paid in full.
3. Respondent is liable for and shall pay to Claimant the sum of \$26,943.89 in costs.
4. Respondent is liable for and shall pay to Claimant the sum of \$256,717.50 in attorneys' fees. The Panel is authorized to award attorneys' fees because both parties requested an award of attorneys' fees.

5. Respondent's Counterclaim is denied. The Promissory Note executed by Claimant is ordered to be forgiven by Respondent. Respondent is ordered to issue the appropriate tax forms.
6. The Panel recommends expungement of the Reason for Termination and the Termination Explanation in Section 3 of Claimant Christopher H. Rusk's (CRD # 5185106) Form U5 filed by First Republic Securities Company, LLC. on September 9, 2016 and maintained by the Central Registration Depository (CRD). The Reason for Termination shall be changed to "Other". The following Termination Explanation should replace the expunged language: "Christopher H. Rusk's termination was unwarranted."

The Panel further recommends the expungement of the "Yes" answer to Questions 7B and 7F(1) on the foregoing Form U5. The answers should be changed to "No" and the accompanying Disclosure Reporting Pages deleted in their entirety. The above recommendations shall apply to all subsequent disclosures concerning this event, including but not limited to, the Amended Form U4 filed by B. Riley Wealth Management on October 27, 2016.

The Panel recommends the expungement based on the defamatory nature of the information. The Form U5 is not automatically amended to include the changes indicated above. Claimant must forward a copy of this Award to FINRA's Registration and Disclosure Department for review.

7. 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:

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|--------------------------|---------------|
| Initial Claim Filing Fee | = \$ 1,575.00 |
| Counterclaim 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 firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, First Republic Securities Company, LLC is assessed the following:

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| Member Surcharge | = \$ 1,900.00 |
| Member Process Fee | = \$ 3,750.00 |

Postponement Fees

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

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|--|---------------|
| January 29-30 & February 1-2, 2018, postponement by Claimant | = \$ 1,125.00 |
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| Total Postponement Fees | = \$ 1,125.00 |

The Panel has assessed the \$1,125.00 adjournment fees to Claimant.

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:

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|--|---------------|
| January 29-30 & February 1-2, 2018, postponement by Claimant | = \$ 1,800.00 |
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| Total Last Minute Cancellation Fees | = \$ 1,800.00 |

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

Discovery-Related Motion Fee

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

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| Five (5) decisions on discovery-related motions on the papers with one (1) arbitrator @ \$200.00/decision | = \$ 1,000.00 |
|---|---------------|

Claimant submitted two discovery-related motions
Respondent submitted three discovery-related motions

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| Total Discovery-Related Motion Fees | = \$ 1,000.00 |

The Panel has assessed \$400.00 of the discovery-related motion fees to Claimant.
The Panel has assessed \$600.00 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.

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| One (1) decision on a contested motion for the issuance of a subpoena with one arbitrator @ \$250.00 | = \$ 250.00 |
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| Total Contested Motion for Issuance of Subpoena Fee | = \$ 250.00 |

The Panel has assessed the \$250.00 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:

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| Three (3) pre-hearing sessions with the Panel @ \$1,125.00/session | | = \$ 3,375.00 |
| Pre-hearing conferences: | | |
| May 18, 2017 | 1 session | |
| May 7, 2018 | 1 session | |
| October 5, 2018 | 1 session | |
| Ten (10) hearing sessions @ \$1,125.00/session | | = \$ 11,250.00 |
| Hearing Dates: | | |
| October 8, 2018 | 2 sessions | |
| October 9, 2018 | 2 sessions | |
| October 10, 2018 | 2 sessions | |
| October 11, 2018 | 2 sessions | |
| October 12, 2018 | 2 sessions | |
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| Total Hearing Session Fees | | = \$ 14,625.00 |

The Panel has assessed the \$1,125.00 of the hearing session fees to Claimant.
The Panel has assessed \$13,500.00 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

| | | |
|----------------------------|---|--|
| Richard E. Castiglioni | - | Public Arbitrator, Presiding Chairperson |
| Patricia Kathleen Costello | - | Public Arbitrator |
| Myron Samuel Glucksman | - | 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



Richard E. Castiglioni
Public Arbitrator, Presiding Chairperson

November 15, 2018
Signature Date



Patricia Kathleen Costello
Public Arbitrator

November 15, 2018
Signature Date

Myron Samuel Glucksman
Non-Public Arbitrator

Signature Date

November 21, 2018

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

ARBITRATION PANEL

| | | |
|----------------------------|---|--|
| Richard E. Castiglioni | - | Public Arbitrator, Presiding Chairperson |
| Patricia Kathleen Costello | - | Public Arbitrator |
| Myron Samuel Glucksman | - | 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.

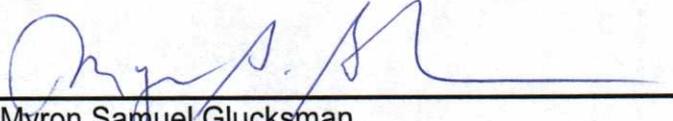
Concurring Arbitrators' Signatures

Richard E. Castiglioni
Public Arbitrator, Presiding Chairperson

Signature Date

Patricia Kathleen Costello
Public Arbitrator

Signature Date



Myron Samuel Glucksman
Non-Public Arbitrator

11/14/18

Signature Date

November 21, 2018

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