

**Award**  
**FINRA Office of Dispute Resolution**

---

In the Matter of the Arbitration Between:

Claimant  
Nicholas Brine Finn

Case Number: 17-01277

vs.

Respondent  
Credit Suisse Securities (USA) LLC

Hearing Site: New York, New York

---

Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant Nicholas Brine Finn: Barry R. Lax, Esq. and Robert Miller, Esq., Lax & Neville LLP, New York, New York.

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

**CASE INFORMATION**

Statement of Claim filed on or about: May 16, 2017.

Answer to Counterclaim filed on or about: August 14, 2017.

Amended Statement of Claim filed on or about: August 10, 2018.

Nicholas Brine Finn signed the Submission Agreement: May 8, 2017.

Statement of Answer and Counterclaim filed by Respondent on or about: July 25, 2017.

Answer and Counterclaims to Amended Statement of Claim filed by Respondent on or about: September 25, 2018.

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

**CASE SUMMARY**

Claimant asserted the following causes of action: violation of New York Labor Law ("NYLL"), breach of contract, breach of the implied covenant of good faith and fair dealings, conversion, fraud, unjust enrichment and false and misleading Form U5.

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

In the Statement of Answer and Counterclaim, Respondent asserted the following causes of action: breach of contract, breach of fiduciary duty, unfair competition and misappropriation of trade secrets.

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

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

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

- a. monetary damages equal to his unpaid earned deferred compensation in an amount to be proven at the hearing but not less than \$800,000.00;
- 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% per annum as required by NYLL §198(1-a);
- e. interest to run as required by NYLL §198(1-a);
- f. amendment of Claimant's Form U5s to reflect termination for "Other-Business closure"; and
- g. such other relief as the Panel deems just, equitable and proper.

In its Statement of Answer and Counterclaim, Respondent requested:

- a. damages sustained as a result of Claimant's breaches;
- b. dismissing the Statement of Claim in its entirety, with prejudice; and
- c. such other further relief as the Arbitrators deem just and proper.

In his Answer to Respondent's Counterclaim, Claimant requested:

- a. monetary damages equal to his unpaid earned deferred compensation in an amount to be proven at the hearing but not less than \$800,000.00;
- 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% per annum as required by NYLL §198(1-a);
- e. interest to run as required by NYLL §198(1-a);
- f. amendment of Claimant's Form U5s to reflect termination for "Other-Business closure"; and
- g. such other relief as the Panel deems just, equitable and proper.

In its Answer and Counterclaim to Amended Statement of Claim, Respondent requested:

- a. damages sustained as a result of Claimant's breaches;
- b. dismissing the Statement of Claim in its entirety, with prejudice; and
- c. such other further relief as the Arbitrator deems just and proper.

At the close of the hearing, Claimant requested compensatory damages in a range between \$975,530.75 and \$1,085,789.35 plus attorneys' fees, interest, and liquidated damages in a range between \$2,456,121.48 and \$2,714,346.37 and amendment of Claimant's Form U5 to reflect termination for "Other- Business closure".

### **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 August 10, 2018, Claimant filed a Motion to Amend his Statement of Claim. Respondent opposed Claimant's Motion to Amend. By Order dated September 5, 2018, the Panel granted Claimant's Motion to Amend.

On or about August 30, 2018, Respondent filed a Motion for Discovery Sanctions. Claimant opposed Respondent's Motion. By Order dated September 10, 2018, the Panel denied Respondent's Motion for Discovery Sanctions.

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 \$975,530.00 in compensatory damages.
2. The panel recommends the expungement of the Reason for Termination in Section 3 of Claimant Nicholas Brine Finn's (CRD# 2295090) Form U5 filed by Respondent Credit Suisse Securities (USA) LLC on December 18, 2015 and maintained by the Central Registration Depository ("CRD"). The Reason for Termination should be changed to, "Other" and the Termination Comment should be "Terminated without cause."

The above recommendation also applies to all subsequent disclosures concerning this event.

These recommendations are made with the understanding that Nicholas Brine Finn 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. Nicholas Brine Finn must forward a copy of the court order to FINRA's Registration and Disclosure Department for review.

3. Respondent's Counterclaim is denied.

4. Any and all claims for relief not specifically addressed herein, including liquidated 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	= \$ 1,725.00
Counterclaim Filing Fee	= \$ 1,700.00

*\*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 event(s) giving rise to the dispute. Accordingly, as a party, Credit Suisse Securities (USA) LLC is assessed the following:

Member Surcharge	= \$ 2,475.00
Member Process Fee	= \$ 5,075.00

#### **Postponement Fees**

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

October 16, 2018, postponement by Respondent	= \$ 1,300.00
<hr/> Total Postponements Fees	<hr/> = \$ 1,300.00

The Arbitrator has assessed the \$1,300.00 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 16, 2018, postponement requested by Respondent	= \$ 1,800.00
<hr/> Total Last Minute Cancellation Fees	<hr/> = \$ 1,800.00

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

#### **Discovery-Related Motion Fee**

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

Four (4) decisions on discovery-related motions on the papers with one (1) arbitrator @ \$200.00/decision	= \$ 800.00
--	-------------

One (1) decision on a discovery-related motion on the papers  
with three (3) arbitrators @ \$600.00 /decision = \$ 600.00

Respondent submitted five (5) discovery-related motions

---

Total Discovery-Related Motion Fees = \$ 1,400.00

The Panel has assessed the \$1,400.00 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.

One (1) decision on a contested motion for the issuance of a subpoena  
with one arbitrator @ \$250.00 = \$ 250.00

---

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:

Three (3) pre-hearing sessions with the Panel @ \$1,300.00/session = \$ 3,900.00

Pre-hearing conferences: October 11, 2017 1 session  
July 9, 2018 1 session  
August 9, 2018 1 session

Eighteen (18) hearing sessions @ \$1,300.00/session = \$ 23,400.00

Hearing Dates: October 1, 2018 2 sessions  
October 2, 2018 2 sessions  
October 3, 2018 2 sessions  
October 4, 2018 2 sessions  
October 5, 2018 2 sessions  
October 15, 2018 2 sessions  
October 16, 2018 1 session  
October 17, 2018 1 session  
October 18, 2018 2 sessions  
October 19, 2018 2 sessions

---

Total Hearing Session Fees = \$ 27,300.00

The Panel has assessed \$27,300.00 of the hearing session fees to Respondent.

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

**ARBITRATION PANEL**

Pamela H. Roderick	-	Public Arbitrator, Presiding Chairperson
Joan M. Traub	-	Public Arbitrator
Joseph Leo Calabrese	-	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**

\_\_\_\_\_  
Pamela H. Roderick  
Public Arbitrator, Presiding Chairperson

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Joan M. Traub  
Public Arbitrator

\_\_\_\_\_  
Signature Date

  
\_\_\_\_\_  
Joseph Leo Calabrese  
Non-Public Arbitrator

  
\_\_\_\_\_  
Signature Date

**November 6, 2018**

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

**ARBITRATION PANEL**

Pamela H. Roderick	-	Public Arbitrator, Presiding Chairperson
Joan M. Traub	-	Public Arbitrator
Joseph Leo Calabrese	-	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**

**/s/ Pamela H. Roderick**

\_\_\_\_\_  
Pamela H. Roderick  
Public Arbitrator, Presiding Chairperson

**November 2, 2018**

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Joan M. Traub  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Joseph Leo Calabrese  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

**November 6, 2018**

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