

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

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In the Matter of the Arbitration Between:

Claimants

Joseph Todd Lerner  
Anna Sarai Winderbaum

Case Number: 17-00057

vs.

Respondent

Credit Suisse Securities (USA) LLC

Hearing Site: New York, New York

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Nature of the Dispute: Associated Persons vs. Member

This case was decided by a majority-public panel.

**REPRESENTATION OF PARTIES**

For Claimants Joseph Todd Lerner, and Anna Sarai Winderbaum: Barry Lax, Esq., Sandra Lahens, Esq., and Robert R. Miller, Esq. Lax & Neville LLP, New York, New York.

For Respondent Credit Suisse Securities (USA) LLC: Kenneth Kelly, Esq. and Victoria Sloan Lin, Esq., Epstein Becker Green, P.C, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: January 5, 2017.

Answer and Affirmative Defenses to Counterclaims filed on or about March 22, 2017.

Amended Statement of Claim filed on or about: February 15, 2019.

Joseph Todd Lerner signed the Submission Agreement: December 30, 2016.

Anna Sarai Winderbaum signed the Submission Agreement: December 30, 2016.

Statement of Answer and Counterclaims filed by Respondent on or about: March 2, 2017.

Respondent's Amended Answer to the Statement of Claim and Counterclaims filed on or about: March 30, 2017.

Answer to Amended Statement of Claim and Counterclaims filed on or about:

December 6, 2018.

Credit Suisse Securities (USA) LLC signed the Submission Agreement: March 2, 2017.

### **CASE SUMMARY**

Claimants asserted the following causes of action: breach of contract, breach of the implied covenant of good faith and fair dealing, conversion, unjust enrichment, false and misleading Form U-5 and fraud.

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

Respondent asserted the following causes of action in its Counterclaims: breach of contract, breach of fiduciary duty, unfair competition, misappropriation of trade secrets and declaratory relief.

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

### **RELIEF REQUESTED**

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

1. Monetary damages equal to their unpaid earned deferred compensation in an amount to be proved at the hearing but no less than \$3.6 million;
2. Attorneys' fees and costs as required by NYLL § 198(1-a);
3. Liquidated damages in an amount equal to the unpaid deferred compensation as required by NYLL § 198(1-a);
4. Prejudgment Interest in the amount of 9 percent per annum as required by NYLL § 198(1-a);
5. Interest to run as required by NYLL § 198(1-a);
6. Amendment to Claimants' Form U-5s to reflect termination for "Other Business closure";
7. For such other relief as the Panel deems just, equitable and proper.

In the Statement of Answer and Counterclaims, Respondent requested:

1. Damages sustained as a result of Claimants' breaches in an amount to be ascertained at the arbitration hearing;
2. A declaration that Claimants are not entitled to vesting or delivery of their unvested contingent deferred awards under the Share Plan and related documentation, whether under a legal theory of constructive termination or otherwise; and
3. Such other further relief as the Arbitrators deem just and proper.

In the Answer to the Statement of Claim and Amended Answer to Statement of Claim and Counterclaims, Respondent requested that the Arbitrators dismiss and/or deny relief on each and every claim asserted by the Claimants; award Respondent the relief it has requested in its Counterclaims; and grant such other and further relief as the Arbitrators deem just and proper.

In the Answer and Affirmative Defenses to Counterclaims, Claimants requested that the Panel issue an award denying Respondent's Counterclaims in their entirety, with costs and attorneys' fees.

At the hearing, Respondent withdrew all Counterclaims except Count 9 seeking declaratory relief.

### **OTHER ISSUES CONSIDERED AND DECIDED**

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

On August 14, 2018, Claimants filed a Motion to Amend the Statement of Claim. On September 5, 2018, Respondent filed an Opposition to the Motion to Amend the Statement of Claim. On September 10, 2018, Claimant filed a Reply in Further Support of their Motion to Amend the Statement of Claim. On September 14, 2018, Claimants filed a Sur-Reply to their Motion to Amend. By Order dated October 13, 2018, the Panel granted Claimants' Motion to Amend the Statement of Claim.

On August 31, 2018, Respondent filed a Motion to Compel and for Sanctions. On September 19, 2018, Claimants filed an Opposition to Respondent's Motion to Compel and for Sanctions and filed a Cross-Motion for Sanctions. On October 5, 2018, Respondent filed a Reply in Support of its Motion to Compel and for Sanction and Opposition to Claimants' Cross-Motion for Sanctions. By Order dated December 20, 2018, the Panel denied the Respondent's Motion for Sanctions and Claimants' Cross-Motion for 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, and the post-hearing submissions, 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 Joseph Todd Lerner the sum of \$1,386,628.00 in compensatory damages.
2. Respondent is liable for and shall pay to Claimant Anna Sarai Winderbaum the sum of \$1,400,716.00 in compensatory damages.

3. Respondent is liable for and shall pay to Claimant Joseph Todd Lerner interest on the compensatory portion of the damages in the amount of \$415,988.40.
4. Respondent is liable for and shall pay to Claimant Anna Sarai Winderbaum interest on the compensatory portion of the damages in the amount of \$420,214.80.
5. Respondent is liable for and shall pay to Claimant Joseph Todd Lerner the sum of \$1,386,628.00 in liquidated damages pursuant to N.Y. Labor Law § 198(1-a).
6. Respondent is liable for and shall pay to Claimant Anna Sarai Winderbaum the sum of \$1,400,716.00 in liquidated damages pursuant to N.Y. Labor Law § 198(1-a).
7. Respondent is liable for and shall pay to Claimants interest on the entire award at the rate of 9% from date of the award until the date the award is paid.
8. Respondent is liable for and shall pay to Claimants the sum of \$14,009.25 in costs.
9. Respondent is liable for and shall pay to Claimants the sum of \$250,000.00 in attorneys' fees pursuant to N.Y. Labor Law § 198(1-a).
10. Respondent's Counterclaim is denied.
11. The Panel recommends that the current Reason for Termination and Termination Explanation on the Form U-5 filed by Credit Suisse Securities (USA) LLC on December 22, 2015 for Claimant Joseph Todd Lerner (CRD# 2513327) be expunged. The reason for Termination should be changed to "Other" and the Termination Explanation be changed to "Terminated without cause".

These recommendations are made with the understanding that Joseph Todd Lerner must obtain confirmation of this award from a court of competent jurisdiction before the CRD will execute the expungement directive.

The Form U-5 is not automatically amended to include the changes indicated above. Claimant Joseph Todd Lerner must forward a copy of the Court Order to FINRA's Registration and Disclosure Department for the amendments to be incorporated into the Form U-5.

12. The Panel recommends that the current Reason for Termination and Termination Explanation on the Form U-5 filed by Credit Suisse Securities (USA) LLC on December 22, 2015 for Claimant Anna Sarai Winderbaum (CRD# 2936921) be expunged. The reason for Termination should be changed to "Other" and the Termination Explanation be changed to "Terminated without cause".

These recommendations are made with the understanding that Anna Sarai Winderbaum must obtain confirmation of this award from a court of competent jurisdiction before the CRD will execute the expungement directive.

The Form U-5 is not automatically amended to include the changes indicated above. Claimant Anna Sarai Winderbaum must forward a copy of the Court Order to FINRA's Registration and Disclosure Department for the amendments to be incorporated into the Form U-5.

13. Any and all claims for relief not specifically addressed herein, including punitive damages, 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	= \$ 2,250.00
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 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	= \$ 3,600.00
Member Process Fee	= \$ 6,800.00

#### **Postponement Fees**

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

June 4-8, 11-15, 2018, postponement by Respondent	= \$ 1,500.00
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Total Postponement Fees	= \$ 1,500.00

The Panel has assessed \$750.00 of the adjournment fees to Claimants jointly and severally.

The Panel has assessed \$750.00 of the adjournment 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

Claimants submitted one discovery-related motion  
Respondent submitted three discovery-related motions

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Total Discovery-Related Motion Fees = \$ 800.00

The Panel has assessed the \$800.00 discovery-related motion fees to the 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:

Five (5) pre-hearing sessions with a single arbitrator @ \$450.00/session = \$ 2,250.00

Pre-hearing conferences: April 17, 2018 1 session  
June 12, 2018 1 session  
October 19, 2018 1 session  
February 7, 2019 1 session  
March 8, 2019 1 session

Seven (7) pre-hearing sessions with the Panel @ \$1,500.00/session = \$10,500.00

Pre-hearing conferences: May 26, 2017 1 session  
May 18, 2018 1 session  
October 12, 2018 1 session  
October 18, 2018 1 session  
December 20, 2018 1 session  
January 31, 2019 1 session  
March 5, 2019 1 session

Twenty-Five (25) hearing sessions @ \$1,500.00/session = \$37,500.00

Hearing Dates: February 25, 2019 2 sessions  
February 26, 2019 2 sessions  
February 27, 2019 2 sessions  
February 28, 2019 2 sessions  
March 1, 2019 2 sessions  
March 11, 2019 2 sessions  
March 12, 2019 2 sessions  
March 13, 2019 2 sessions  
March 14, 2019 2 sessions  
March 15, 2019 2 sessions  
March 18, 2019 2 sessions  
March 19, 2019 1 session  
April 10, 2019 2 sessions

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Total Hearing Session Fees	= \$50,250.00
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The Panel has assessed the \$50,250.00 hearing session fees to the Respondent.

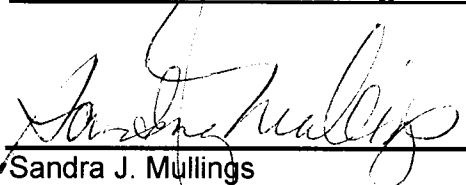
All balances are payable to FINRA Office of Dispute Resolution and are due upon receipt.


**ARBITRATION PANEL**

Sandra J. Mullings	-	Public Arbitrator, Presiding Chairperson
Martin Izaak	-	Public Arbitrator
Douglas F. Stone	-	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**

  
\_\_\_\_\_  
Sandra J. Mullings  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Martin Izaak  
Public Arbitrator

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

\_\_\_\_\_  
Douglas F. Stone  
Non-Public Arbitrator

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

**May 7, 2019**  
\_\_\_\_\_  
Date of Service (For FINRA Office of Dispute Resolution office use only)



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Public Arbitrator, Presiding Chairperson



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

5/1/2019

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Public Arbitrator

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Signature Date

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Non-Public Arbitrator

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Signature Date

**May 7, 2019**

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Martin Izaak  
Public Arbitrator

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Signature Date

  
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Douglas F. Stone  
Non-Public Arbitrator

5/6/2019  
\_\_\_\_\_  
Signature Date

**May 7, 2019**  
\_\_\_\_\_  
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