

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

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In the Matter of the Arbitration Between:

Claimant  
Brian M. Chilton

Case Number: 16-03065

vs.

Respondent  
Credit Suisse Securities (USA) LLC

Hearing Site: Boston, Massachusetts

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant Brian M. Chilton: Barry R. Lax, Esq., Lax & Neville LLP, New York, New York.

For Respondent Credit Suisse Securities (USA) LLC: Kenneth J. Kelly, Esq., Epstein Becker & Green, P.C., New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: October 20, 2016.  
Answer to Counterclaim filed on or about: January 11, 2017.  
Amended Answer to Counterclaim filed on or about: January 26, 2017.  
Claimant signed the Submission Agreement: October 14, 2016.

Statement of Answer and Counterclaim filed by Respondent on or about: December 20, 2016.  
Respondent signed the Submission Agreement: December 20, 2016.

**CASE SUMMARY**

Claimant asserted the following causes of action: violation of Massachusetts Wage Act, breach of contract, breach of the implied covenant of good faith and fair dealing, unjust enrichment, and, false and misleading Form U5.

During the hearing, Claimant waived his claims for return of amounts paid under a promissory note executed in favor of the Respondent, as well as his claim for unjust enrichment.

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

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

During the hearing, Respondent waived its claims under counts 2, 3, 4, 5, and 6.

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

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested compensatory damages in an amount not less than \$1,300,000.00, restitution of \$429,835.32 paid against Claimant's Promissory Note, attorneys' fees, treble damages, expungement of Claimant's Form U5 which should be amended to reflect termination for "Other – Business closure", and such other relief as deemed just, equitable and proper.

At the close of the hearing, Claimant requested compensatory damages in a range between \$1,930,670.53 to \$3,472,949.10 plus interest, attorneys' fees and costs.

In the Statement of Answer and Counterclaim, Respondent requested that the Arbitrators dismiss and/or deny Claimant's claims, repayment of outstanding arrears balance of \$20,222.35 plus accrued interest, costs, attorneys' fees, unspecified damages for Claimant's breaches, declaration that Claimant is not entitled to vesting or delivery of his unvested contingent deferred awards, and such other and further relief as deemed just and proper.

At the close of the hearing, Respondent requested compensatory damages in the amount of \$20,222.35 plus interest, attorneys' fees and costs.

In the Answer and Amended Answer to the Counterclaim, Claimant requested that the Counterclaim be denied in its entirety.

### **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, 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 the sum of \$585,307.20 in compensatory damages.
2. Respondent is liable for and shall pay to Claimant interest in the sum of \$131,694.12.
3. Respondent is liable for and shall pay to Claimant the sum of \$146,326.80 in attorneys' fees as both parties requested award of attorneys' fees.
4. Claimant is liable for and shall pay to Respondent the sum of \$13,410.40 in compensatory damages.
5. Claimant is liable for and shall pay to Respondent interest in the sum of \$1,554.90.
6. Claimant is liable for and shall pay to Respondent the sum of \$3,741.33 in attorneys' fees as both parties requested award of attorneys' fees.
7. This Award is subject to an offset as described in item 8 below. Claimant's obligations are extinguished by the offset
8. Respondent's award in the total amount of \$18,706.63 is an offset to Claimant's award in the total amount of \$863,328.12. As such, Respondent is liable for and shall pay to Claimant the amount of \$863,328.12 minus \$18,706.63 awarded to Respondent, for a net amount due to Claimant of \$844,621.49.
9. The parties must continue to abide by the terms of the Confidentiality Order dated January 24, 2018.
10. The Panel recommends that the current Reason for Termination on the Form U5 filed by Credit Suisse Securities (USA) LLC on April 7, 2016 for Brian M. Chilton (CRD # 5011821) be expunged and changed to "Other" on the registration records maintained by the Central Registration Depository ("CRD"). In addition, the Panel recommends that the Termination Explanation be "terminated without cause on March 16, 2016". These recommendations are made with the understanding that, Brian M. Chilton 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. Brian M. Chilton must forward a copy of the Court Order to FINRA's Registration and Disclosure Department for the amendments to be incorporated into the Form U5.

11. Any and all claims for relief not specifically addressed herein, including treble 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	= \$ 1,050.00

*\*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, 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:

March 26 – 29, April 23 -24, 2018 postponement by Respondent	= \$1,500.00
May 7, 2018 postponement by the parties	= \$1,500.00
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Total Postponement Fees	= \$3,000.00

1. The Panel has assessed \$1,500.00 of the postponement fees to Claimant.
2. The Panel has assessed \$1,500.00 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:

May 7, 2018 postponement requested by the parties	= \$1,800.00
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Total Last Minute Cancellation Fees	= \$1,800.00

1. The Panel has assessed \$900.00 of the last minute cancellation fees to Claimant.
2. The Panel has assessed \$900.00 of the last minute cancellation fees to Respondent.

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

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

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

Respondent submitted five (5) discovery-related motions

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

The Panel has assessed the discovery-related motion fees of \$1,000.00 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:

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

Pre-hearing conferences: January 17, 2018 1 session  
January 19, 2018 1 session  
February 23, 2018 1 session  
February 26, 2018 1 session  
March 23, 2018 1 session

Three (3) pre-hearing sessions with the Panel @ \$1,500.00/session = \$ 4,500.00

Pre-hearing conferences: March 23, 2017 1 session  
February 6, 2018 1 session  
March 6, 2018 1 session

Forty-two (42) hearing sessions @ \$1,500.00/session = \$63,000.00

Hearing Dates: April 25, 2018 2 sessions  
April 26, 2018 2 sessions  
April 27, 2018 2 sessions  
May 1, 2018 2 sessions  
May 2, 2018 2 sessions  
May 3, 2018 2 sessions  
May 8, 2018 2 sessions  
May 9, 2018 2 sessions  
June 18, 2018 2 sessions  
June 19, 2018 2 sessions  
June 20, 2018 2 sessions  
June 21, 2018 2 sessions  
June 22, 2018 2 sessions  
July 16, 2018 2 sessions  
July 18, 2018 2 sessions  
August 6, 2018 2 sessions  
August 7, 2018 2 sessions  
August 8, 2018 2 sessions

September 5, 2018	2 sessions
September 6, 2018	2 sessions
September 7, 2018	2 sessions

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Total Hearing Session Fees	= \$69,750.00
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The Panel has assessed the hearing session fees of \$69,750.00 to Respondent.

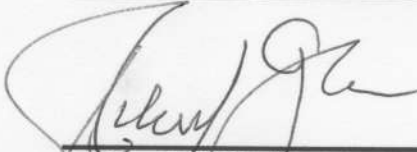
All balances are payable to FINRA Office of Dispute Resolution and are due upon receipt.

**ARBITRATION PANEL**

Richard J. Grahn	-	Public Arbitrator, Presiding Chairperson
Howard N. Gorney	-	Public Arbitrator
Jeffrey Neil Fink	-	Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument which is my award.

**Concurring Arbitrators' Signatures**



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Richard J. Grahn  
Public Arbitrator, Presiding Chairperson

10/10/18

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Signature Date

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Howard N. Gorney  
Public Arbitrator

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Signature Date

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Jeffrey Neil Fink  
Non-Public Arbitrator

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Signature Date

October 10, 2018  
Date of Service (For FINRA Office of Dispute Resolution office use only)

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