

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant
Oppenheimer & Co., Inc.

Case Number: 17-03404

vs.

Respondent
Francis Xavier Roche

Hearing Site: San Francisco, California

Nature of the Dispute: Member vs. Associated Person

Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant Oppenheimer & Co., Inc. ("Claimant"): Donald A. Corbett, Esq.,
Oppenheimer & Co. Inc., New York, New York.

For Respondent Francis Xavier Roche ("Respondent"): David H. S. Commins, Esq.,
Commins & Knudsen, P.C., Oakland, California.

CASE INFORMATION

Statement of Claim filed on or about: December 18, 2017.
Claimant signed the Submission Agreement: December 18, 2017.

Statement of Answer and Counterclaim filed by Respondent on or about: March 8, 2018
Respondent signed the Submission Agreement: March 8, 2018.

Answer to the Counterclaim filed by Claimant on or about: April 10, 2018.

CASE SUMMARY

Claimant asserted a claim that Respondent failed to pay the outstanding balance of a Promissory Note executed by Respondent on or about April 20, 2015 ("Note"). Claimant asserted that the remaining balance of the Note became due upon Respondent's allegedly voluntary resignation from Claimant's firm.

In the Statement of Answer and Counterclaim, Respondent denied the allegations made in the Statement of Claim, and asserted that he was constructively terminated by

Claimant's firm and that he is owed compensation for his unpaid bonus, unpaid salary and unused vacation days.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Actual damages in the total amount of \$115,625.00 pursuant to the Note;
2. Interest at the rate of 9% per annum on \$115,625.00 pursuant to the Note accrued from October 3, 2016 through the date of payment in full; and
3. All costs incurred by Claimant in connection with the enforcement and collection of the amount owed, including but not limited to, FINRA filing fees of no less than \$3,825.00 and attorneys' fees incurred in connection with the filing of this Statement of Claim.

In the Statement of Answer and Counterclaim, Respondent requested:

1. The amount due on the Note should be no more than \$101,774.00, which is the amount Claimant demands, \$115,625.00, less prorated forgiveness of \$13,851.00;
2. Payment for an unpaid "guaranteed bonus" for 2016, as well as unpaid salary, for a total of \$133,206.69;
3. Payment for unused vacation days in the amount of \$16,256.76;
4. Penalties under the Labor Code of no less than \$66,532.52 pursuant to California law; and
5. Recovery of attorneys' fees and costs pursuant to the Note and California Civil Code, Sec. 1717.

In the Answer to the Counterclaim, Claimant requested:

1. Dismissal of the Respondent's Counterclaim in its entirety;
2. An award in favor of Claimant on its underlying claims;
3. An award for reasonable attorneys' fees incurred by Claimant in connection with this arbitration; and
4. Such other and further relief as the Panel deems just and equitable.

At the close of the hearing, Claimant requested \$155,129.73 in damages, which includes \$3,825.00 in FINRA costs. Respondent requested \$196,849.00 in addition to penalties in the amount of \$29,166.66, plus California Labor Code penalties, and FINRA arbitration fees for this employment matter.

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. a. Respondent is liable for and shall pay to Claimant the sum of \$112,933.00 in compensatory damages.
 - b. Respondent is liable for and shall pay to Claimant 9% interest through November 14, 2018 in the amount of \$21,286.00, plus interest from November 15, 2018 until January 4, 2019 in the amount of \$1,392.50 (\$27.85 per diem).
 - c. Claimant is liable for and shall pay to Respondent the sum of \$262,500.00 in compensatory damages.
 - d. Respondent's liability is offset by Claimant's liability. As such, Claimant is liable for and shall pay to Respondent \$262,500.00 minus \$135,611.50, for a net amount due to Respondent of \$126,888.50.
2. a. Respondent is liable for and shall pay to Claimant the sum of \$4,065.95 in attorneys' fees pursuant to the Note and CA Civil Code, Sec. 1717.
 - b. Claimant is liable for and shall pay to Respondent the sum of \$35,772.44 in attorneys' fees and costs pursuant to the Note and CA Civil Code, Sec. 1717.
 - c. Respondent's liability is offset by Claimant's liability for attorneys' fees and costs. As such, Claimant is liable for and shall pay to Respondent \$35,772.44 minus \$4,065.95, for a net amount due to Respondent of \$31,706.49.
3. Respondent is the prevailing party in this matter. Claimant is liable for and shall pay to Respondent interest at the rate of 10% per annum on \$158,594.99 from the date of service of this Award until payment of the Award is made in full.
4. 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	=\$ 2,125.00
Counterclaim Filing Fee	=\$ 1,425.00

**The filing fee is made up of a non-refundable and a refundable portion.*

Pursuant to *Armendariz v. Foundation Health Psychcare Services, Inc.*, 24 Cal. 4th 83 (2000), Respondent is assessed a \$200.00 counterclaim filing fee. The balance of the nonrefundable portion of the counterclaim filing fee, in the amount of \$100.00, is assessed to Claimant.

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Claimant is assessed the following:

Member Surcharge	= \$ 1,700.00
Member Process Fee	= \$ 3,250.00

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:

One (1) pre-hearing session with a single arbitrator @ \$450.00/session	= \$450.00
Pre-hearing conference: October 22, 2018	1 session
Two (2) pre-hearing sessions with the Panel @ \$1,125.00/session	= \$2,250.00
Pre-hearing conferences: May 2, 2018	1 session
May 30, 2018	1 session
Four (4) hearing session @ \$1,125.00/session	= \$4,500.00
Hearing Dates: November 13, 2018	2 sessions
November 14, 2018	2 sessions
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Total Hearing Session Fees	= \$7,200.00

Pursuant to *Armendariz v. Foundation Health Psychcare Services, Inc.*, 24 Cal. 4th 83 (2000), the Panel assessed \$7,200.00 of the hearing session fees to Claimant.

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

ARBITRATION PANEL

John J. Fitzpatrick, Jr.	-	Public Arbitrator, Presiding Chairperson
Nancy Hutt	-	Public Arbitrator
James G. Gillivan	-	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

/s/John J. Fitzpatrick, Jr.
John J. Fitzpatrick, Jr.
Public Arbitrator, Presiding Chairperson

January 4, 2019
Signature Date

Nancy Hutt
Nancy Hutt
Public Arbitrator

Signature Date

James G. Gillivan
James G. Gillivan
Non-Public Arbitrator

Signature Date

January 7, 2019
Date of Service (For FINRA Office of Dispute Resolution office use only)

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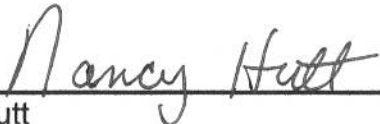
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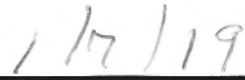
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