

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant
Ty Kevin Bauer

Case Number: 18-01022

vs.

Respondents
Donald C. Blackwell
Calton & Associates, Inc.
Michael Conrad Ihrie

Hearing Site: Memphis, Tennessee

Counter-Claimant
Donald C. Blackwell

vs.

Counter-Respondent
Ty Kevin Bauer

Nature of the Dispute: Associated Person vs. Member and Associated Persons
 Associated Person vs. Associated Person

REPRESENTATION OF PARTIES

For Claimant/Counter-Respondent Ty Kevin Bauer: Andy T. Arant, Jr., Esq., Arant Law Firm, Oxford, Mississippi.

For Respondents Calton & Associates, Inc. ("CAI") and Michael Conrad Ihrie ("Ihrie"): Debra A. Jenks, Esq., Jenks & Harvey LLP, West Palm Beach, Florida.

For Respondent/Counter-Claimant Donald C. Blackwell ("Blackwell"): Brad Walsh, Esq., The Walsh Law Firm, PC, Oxford, Mississippi.

CAI, Ihrie and Blackwell are hereinafter collectively referred to as "Respondents."

CASE INFORMATION

Statement of Claim filed on or about: March 15, 2018.
Answer to Counterclaim filed on or about: April 9, 2019.
Claimant signed the Submission Agreement: March 15, 2018.

Statement of Answer filed by CAI and Ihrie on or about: May 24, 2018.
CAI and Ihrie signed the Submission Agreement: May 24, 2018.

Statement of Answer filed by Blackwell on or about: July 27, 2018.
Amended Answer and Counterclaim filed by Blackwell on or about: March 22, 2019.
Blackwell signed the Submission Agreement: July 26, 2018.

CASE SUMMARY

Claimant asserted the following causes of action: violation of Mississippi Uniform Trade Secrets Act (Miss. Code Ann § 75-26-1 to 75-26-19 (2011)); breach of contract; intentional interference with prospective business advantage; violation of FINRA rules; and violation of SEC Regulation S-P. The causes of action relate to allegations of wrongdoing following Blackwell and Ihrle's departure from employment with Claimant.

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

Unless specifically admitted in the Statement of Answer and Amended Statement of Answer, Blackwell denied the allegations made in the Statement of Claim.

In the Counterclaim, Blackwell asserted the following causes of action: libel/defamation of character; and abuse of process.

Unless specifically admitted in the Statement of Answer to the Counterclaim, Claimant denied the allegations made in the Counterclaim.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Injunctive relief;
2. Compensatory damages;
3. Punitive damages;
4. Pre-judgment interest;
5. Post-judgment interest;
6. Attorneys' fees and costs;
7. All other amounts to which Claimant is entitled as a matter of law; and
8. Other relief, both legal and equitable, to which Claimant may be entitled.

In the Statement of Answer, CAI and Ihrle requested:

1. Denial of Claimant's Statement of Claim; and
2. Dismissal of this matter in its entirety.

In the Statements of Answer, Blackwell did not set forth a relief request.

In the Amended Answer, Blackwell requested:

1. Denial of Claimant's Statement of Claim; and
2. Dismissal of this matter in its entirety.

In the Counterclaim, Blackwell requested:

1. Compensatory damages;
2. Attorneys' fees pursuant to relevant state statutes;
3. Costs incurred in this action; and
4. Such other and further relief as is warranted in the premises.

In the Answer to the Counterclaim, Claimant requested:

1. Dismissal of the Counterclaim, with prejudice;
2. All costs including, but not limited to, attorneys' fees, expenses and costs of arbitration be assessed to Blackwell; and
3. Such other relief, both general and special, as may be appropriate under the circumstances.

OTHER ISSUES CONSIDERED AND DECIDED

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

On March 9, 2019, Blackwell filed a request for leave to file an amended answer and counterclaim in accordance with Rule 13309 of the Code of Arbitration Procedure ("Code"). On March 15, 2019, Claimant filed an objection to Blackwell's request. On March 17, 2019, CAI and Ihrle filed a notice of no objection to the request. On March 18, 2019, Claimant re-filed the objection to the request. On March 21, 2019, the Panel issued an Order granting Blackwell's request for leave to file an amended answer and counterclaim noting that Claimant did not object. Accordingly, the Amended Answer and Counterclaim became part of the record. On March 28, 2019, the Panel issued a corrected Order granting the request, this time noting Claimant's objection.

After the conclusion of Claimant's case-in-chief at the evidentiary hearing held on November 20, 2019, CAI and Ihrle orally moved for dismissal of Claimant's claims against them. Claimant opposed the motion. After due deliberation, the Panel issued an Order dated November 21, 2019 dismissing Claimant's Statement of Claim as to CAI and Ihrle, and requesting Claimant and Blackwell ("Remaining Parties") propose dates to resume the hearing of this matter.

On November 24, 2019, Blackwell filed a motion to dismiss under Rule 13504(b) of the Code. In the motion to dismiss, Blackwell also requested he be allowed to withdraw his counterclaim should the Panel dismiss Claimant's case against him. On December 6, 2019, Claimant filed an opposition to the motion. On December 9, 2019, Blackwell filed a reply to Claimant's response. By Order dated December 16, 2019, the Panel denied Blackwell's motion to dismiss at this time and deferred hearing oral argument on Blackwell's motion to dismiss at the commencement of the January 27, 2020 hearing.

At the outset of the January 27 evidentiary hearing, prior to argument by counsel on Blackwell's motion to dismiss, Claimant conceded there was no private cause of action under SEC Regulation S-P. As such, the Panel determined that claim withdrawn.

Subsequently, the Panel heard oral arguments on Blackwell's motion to dismiss. Claimant opposed the motion. After a brief caucus, the Panel advised the Remaining

Parties that the motion to dismiss would be tabled pending Blackwell putting on a defense should he elect to do so. Blackwell chose to put on his defense and counterclaim. After Blackwell rested, the Panel declared the record closed. After due deliberation, the Panel has now determined to deny Blackwell's motion to dismiss.

The Arbitrators have provided an explanation of their decision in this award. The explanation is for the information of the parties only and is not precedential in nature.

The Remaining Parties 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. Claimant failed to establish entitlement to relief from Blackwell. As such, Claimant's claims against Blackwell are denied.
2. Blackwell's counterclaim is denied, as he did not proffer any evidence during his presentation as to his counterclaim.
3. Any and all claims for relief not specifically addressed herein, including Claimant's punitive damages and attorneys' fees, are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

FINRA Office of Dispute Resolution assessed a filing fee* for each claim:

Initial Claim Filing Fee	= \$ 1,575.00
Counterclaim Filing Fee	= \$ 1,575.00

**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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, CAI is assessed the following:

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:

April 23-25, 2019, postponement by CAI and Ihrle = \$1,125.00

Total Postponement Fees = \$1,125.00

The Panel has assessed \$562.50 of the postponement fees to Claimant.
The Panel has assessed \$562.50 of the postponement fees to CAI.

Discovery-Related Motion Fee

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

Three (3) decisions on discovery-related motions on the papers
with one (1) arbitrator @ \$200.00/decision = \$600.00

Claimant submitted (1) discovery-related motion on the papers
CAI and Ihrle submitted (1) discovery-related motion on the papers
Non-party submitted (1) discovery-related motion on the papers

Total Discovery-Related Motion Fees = \$600.00

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

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 \$250.00 of the contested motion for issuance of subpoenas fees to Claimant.

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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) pre-hearing sessions with the Panel @ \$1,125.00/session = \$2,250.00
Pre-hearing conferences: July 16, 2018 1 session
September 3, 2019 1 session

Eight (8) hearing sessions @ \$1,125.00/session = \$9,000.00
Hearing Dates: November 18, 2019 2 sessions
November 19, 2019 2 sessions

November 20, 2019	2 sessions
January 27, 2020	2 sessions

Total Hearing Session Fees	= \$11,250.00
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The Panel has assessed \$11,250.00 of the hearing session fees to Claimant.

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

ARBITRATION PANEL

Stephen H. Biller	-	Public Arbitrator, Presiding Chairperson
Earle J. Schwarz	-	Public Arbitrator
William Robert Vance, Jr.	-	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

Stephen H. Biller

Stephen H. Biller
Public Arbitrator, Presiding Chairperson

02/05/2020

Signature Date

Earle J. Schwarz

Earle J. Schwarz
Public Arbitrator

02/05/2020

Signature Date

William Robert Vance, Jr.

William Robert Vance, Jr.
Non-Public Arbitrator

02/03/2020

Signature Date

February 06, 2020

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