

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Michael Scott Pinkans

Case Number: 22-02442

vs.

Respondents
Equity Services, Inc.
Robert Alan Falato
Northern Trust Securities, Inc.
Susan E. Roberts
Constance Ann Snowden Capco

Hearing Site: Tampa, Florida

Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

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

This case was decided by a majority-public panel.

REPRESENTATION OF PARTIES

Claimant Michael Scott Pinkans appeared pro se.

For Respondents Northern Trust Securities, Inc. (“NTS”), Robert Alan Falato (“Falato”), and Constance Ann Snowden Capco (“Capco”): H. Nicholas Berberian, Esq., Neal, Gerber, Eisenberg, Chicago, Illinois.

For Respondent Equity Services, Inc. (“ESI”): Derek C. Anderson, Esq., Winget Spadafora Schwartzberg LLP, Boulder, Colorado.

For Respondent Susan E. Roberts (“Roberts”): Allen P. Pegg, Esq., Hogan Lovells US LLP, Miami, Florida.

CASE INFORMATION

Statement of Claim filed by Claimant on or about: November 22, 2022.
Michael Scott Pinkans signed the Submission Agreement: November 22, 2022.

Statement of Answer filed by Respondents NTS, Falato and Capco on or about: January 26, 2023.

Northern Trust Securities, Inc. signed the Submission Agreement: January 23, 2023.
Robert Alan Falato signed the Submission Agreement: January 24, 2023.
Constance Ann Snowden Capco signed the Submission Agreement: January 24, 2023.

Statement of Answer filed by Respondent Roberts on or about: January 26, 2023.
Susan E. Roberts signed the Submission Agreement: January 26, 2023.

Statement of Answer filed by Respondent ESI on or about: February 2, 2023.
Equity Services, Inc. signed the Submission Agreement: February 1, 2023.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action against Respondent Roberts: providing false statements; unjust enrichment; willful obstruction of justice; conspiracy to commit securities fraud; securities fraud; conspiracy to commit federal wire fraud; federal wire fraud; willful aiding, abetting, counseling and procurement of violations of the U.S. SEC Act of 1934 and FINRA Rules 2010 and 2040; willful violations of RICO; willful interference with the client of, and the securities commissions to be received by, another registered representative; willful violation of fiduciary duty of care and loyalty; willful disregard of federal and state securities laws concerning ownership rights for members of a licensed insurance agency in the State of Florida; willful collusion with Respondent NTS to prohibit, impede, and prevent the rightful managing member of a licensed insurance agency to take control; creation and/or allowance of the filing of false federal tax return(s) for a licensed insurance agency; willful provision of false documentation to Respondent NTS with the intent and commitment to commit fraud; provision of false information to opposing counsel; violation of standards of conduct by withholding and/or not being forthcoming with information in civil court; and failure to correct false LLC annual report filing in April 2021. Claimant asserted the following causes of action against Respondents NTS, Falato and Capco: aiding and abetting fraud; negligence; breach of fiduciary duty; and negligent supervision. Claimant asserted the following cause of action against Respondent ESI: negligent supervision of Respondent Roberts. The causes of action relate to a dispute regarding Claimant's membership rights in the licensed insurance agency, Acorn Granite Services, LLC ("Acorn"), and the alleged non-payment of securities commissions to Claimant.

Unless specifically admitted in their respective Statements of Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: \$2,790,000.00 in compensatory damages; an estimated \$125,000.00 in compensatory damages to reimburse Claimant for the present value of renewal securities commissions for clients that Respondent Roberts allegedly interfered with; a finding that fraudulent behavior took place by Respondent Roberts and her team, and all communications that would normally be protected by attorney-client privilege be waived; all emails and communications between Respondent Roberts and her legal counsel be turned over to Claimant for inspection; \$8,745,000.00 in treble damages; interest; reasonable attorneys' fees; arbitration fees; and that Respondents Falato, Capco, and Roberts, as well as their associated broker-dealers, have disclosures on their Central Registration Depository ("CRD")

Form U4 registration records and BrokerCheck® Reports to accurately reflect the severity of their behavior.

In their Statement of Answer, Respondents NTS, Falato and Capco requested: dismissal of Claimant's claim in its entirety; forum fees and attorneys' fees and costs be assessed against Claimant; expungement of all references to this claim (Occurrence Number 2249490) from the CRD records for Respondent Falato (CRD Number 2115975); and expungement of all references to Occurrence Number 2249510 from the CRD records for Respondent Capco (CRD Number 3136284).

In her Statement of Answer, Respondent Roberts requested: dismissal of the Statement of Claim with prejudice; reasonable costs and expenses, including reasonable attorneys' fees and forum fees; expungement of the claim of Claimant from the CRD records for Respondent Roberts (CRD Number 7026256); and such other and further relief as the Panel deemed just, fit, and proper.

In its Statement of Answer, Respondent ESI requested: dismissal of the Statement of Claim in its entirety; costs and expenses of this arbitration, including forum fees and reasonable attorneys' fees; and such other and further relief as is just and proper.

At the hearing, Respondents NTS, Falato and Capco requested \$440,799.50 in attorneys' fees and costs.

OTHER ISSUES CONSIDERED AND DECIDED

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

On January 24, 2023, Claimant filed a Motion to Disqualify Allen Pegg, Esq., and Hogan Lovells US LLP as Counsel for Respondent Roberts (the "Motion to Disqualify"), arguing that Mr. Pegg and other attorneys at Hogan Lovells US LLP will be called as fact witnesses. On February 3, 2023, Respondent Roberts filed a Response in Opposition to Claimant's Motion to Disqualify, arguing that Mr. Pegg and Hogan Lovells US LLP must be allowed to continue in its representation of Respondent Roberts. On April 21, 2023, Claimant filed Additional Information for Motion to Disqualify Counsel Scheduled for May 1, 2023, which added more facts in support of Claimant's Motion to Disqualify. On April 25, 2023, Respondent Roberts filed a Motion to Strike Claimant's Untimely Submission of Additional Information Concerning Motion to Disqualify Counsel, arguing that Claimant's April 21, 2023, filing was untimely. On May 1, 2023, the Panel heard oral arguments on the Motion to Disqualify. On May 1, 2023, the Panel denied the Motion to Disqualify.

On February 2, 2023, Respondent Roberts filed a Notice of Withdrawal of Expungement Request to provide notice that she withdrew, without prejudice, the request in her Statement of Answer that the claim of Claimant be expunged from her CRD records.

On February 9, 2023, Claimant filed an Answer to Respondent ESI's Statement of Answer, which added more facts in support of his claim and requested that Respondent ESI's request to dismiss the Statement of Claim in its entirety, along with its other relief requests, be denied. On February 10, 2023, Respondent ESI filed a Motion to Strike Claimant's Answer to Respondent

ESI's Statement of Answer, arguing that FINRA Rules do not allow for responses or replies to statements of answer. On May 1, 2023, the Panel heard oral arguments on the Motion to Strike Claimant's Answer to Respondent ESI's Statement of Answer. On May 1, 2023, the Panel denied the Motion to Strike Claimant's Answer to Respondent ESI's Statement of Answer.

On August 14, 2023, Respondent ESI filed a Motion to Dismiss pursuant to Rule 13504(a)(6)(B) and (C) of the Code of Arbitration Procedure ("Code"), arguing that Respondent ESI is not associated with the conduct at issue and that Claimant previously brought a claim regarding the same dispute against the same parties that was fully and finally adjudicated on the merits and memorialized in a judgment, award or decision. On August 22, 2023, Claimant filed a response in opposition to Respondent ESI's Motion to Dismiss, which included a request for the imposition of sanctions against Respondent ESI. On August 28, 2023, Respondent ESI filed a reply in support of its Motion to Dismiss. On September 1, 2023, Respondent ESI filed a response in opposition to Claimant's countermotion for sanctions, which Claimant filed as part of his response in opposition of Respondent ESI's Motion to Dismiss. On November 13, 2023, the Panel heard oral arguments on the Motion to Dismiss. On December 11, 2023, the Panel denied Claimant's countermotion for sanctions and granted the Motion to Dismiss pursuant to Rule 13504(a)(6)(B), and provided the following explanation:

The Panel finds that even assuming that Respondent ESI failed in any way in its duty to supervise Respondent Roberts, there is no allegation that any public customer was affected. Respondent ESI did not owe a duty to Claimant, a stranger, to protect him from Respondent Roberts' alleged misconduct in a lawsuit of which it was unaware and in which it had no concern, and in which Claimant, an experienced industry professional, was represented by competent attorneys.

The Panel finds that dismissal of Claimant's claims against Respondent ESI should be granted under FINRA Rule 13504(a)(6)(B): Respondent ESI was not a party to the conduct underlying the statement of claim.

On September 13, 2023, Respondent Roberts filed a Motion to Dismiss pursuant to Rule 13504(a)(6)(C), arguing that the claims and arguments Claimant pursues in this action were already fully and finally adjudicated on the merits and memorialized in a judgment, award or decision. On October 12, 2023, Claimant filed a response in opposition to Respondent Roberts's Motion to Dismiss, which included a request for the imposition of sanctions against Respondent Roberts. On October 24, 2023, Respondent Roberts filed a reply in support of her Motion to Dismiss. On October 29, 2023, Claimant filed an Additional Response to Respondent Roberts's Motion to Dismiss. On November 13, 2023, the Panel heard oral arguments on the Motion to Dismiss. On December 11, 2023, the Panel granted in part, and denied in part Respondent Roberts's Motion to Dismiss pursuant to Rule 13504(a)(6)(C) and provided the following explanation:

The doctrine of collateral estoppel supports a decision that dismissal under Rule 13504(a)(6)(C) in this case is appropriate.

The equitable doctrine of collateral estoppel, also called issue preclusion, means that a valid and final judgment binds the parties to a case and their privies (meaning legally connected parties, such as a corporate officer involved in the conduct like Respondent Roberts) in subsequent actions on different causes of action between them (or their

privies) as to same issues actually litigated and essential to the judgment in the first action. (LII Wex.) The four essential elements to decide if issue preclusion applies are: 1) the former judgment is valid and final; 2) the same issue is being brought; 3) the issue is essential to the judgment; and 4) the issue was actually litigated. (LII Wex.)

Many if not all of Claimant's allegations in his Statement of Claim and in his arguments and filings to this Panel are regarding issues that were actually raised and adjudicated in the underlying Pinellas County action. There is one exception: the underlying action did not allege that Respondent Roberts interfered with Claimant's customers, causing him damage.

The issue of Claimant's breach of his non-compete agreement was raised and adjudicated, and by its final judgment, the Pinellas court ordered that the non-compete agreement be extended for an additional 21 months from September of 2020 (thereby expiring on June 6, 2022). During this time, Claimant was expressly forbidden to compete with Capital Formation Counselors, Inc. ("CFC"), of which Respondent Roberts was Executive Vice President. (Respondent Roberts's spouse died in February of 2021; Respondent Roberts is now CEO and Chairperson of CFC.) Claimant was forbidden to compete with CFC until June 6, 2022; it seems possible that any of Respondent Roberts's alleged conduct, whatever it was, may have been to assert CFC's rights under the non-compete agreement to protect its own clients. But this claim nevertheless remains unadjudicated.

The Panel therefore grants the Motion to Dismiss in favor of Respondent Roberts under Rule 13504(a)(6)(C) of all claims with the exception of one claim: Claimant's claim that Respondent Roberts interfered with his clients.

On December 20, 2023, Claimant filed a Motion for Reconsideration of the Panel's Order dated December 11, 2023, and relating to Respondent ESI's Motion to Dismiss and Respondent Roberts's Motion to Dismiss, arguing that the Panel misunderstood the facts, or there is sufficient disagreement between the parties concerning the facts which can only be resolved by proceeding with a full hearing based on all the evidence. On January 2, 2024, Respondent Roberts filed a response in opposition to the Motion for Reconsideration, arguing that Claimant presents no basis to alter the Panel's Order granting the Motions to Dismiss, which followed full briefing, extensive oral argument, and was detailed and well-reasoned. On January 7, 2024, Claimant filed a reply in support of the Motion for Reconsideration, which included a request for the imposition of sanctions against Respondent Roberts. On January 12, 2024, Respondent Roberts filed a response in opposition to Claimant's request for sanctions against Respondent Roberts. On January 16, 2024, Claimant filed a reply in support of the request for sanctions against Respondent Roberts. On January 26, 2024, Respondent ESI filed a response in opposition to the Motion for Reconsideration, arguing that Claimant's Motion for Reconsideration did not introduce any new facts and there is no misunderstanding. On February 1, 2024, the Panel heard oral arguments on the Motion for Reconsideration. On February 1, 2024, the Panel denied the Motion for Reconsideration.

On May 8, 2024, Respondents NTS, Falato and Capco filed a Motion to Assess Attorneys' Fees and Costs Against Claimant ("Motion to Assess"), arguing that the claims Claimant has asserted against Respondents NTS, Falato and Capco are: (a) not supported by the material facts necessary to establish any of the claims against Respondents NTS, Falato and Capco, and (b)

not supported by the application of existing law to the material facts that do exist. On May 20, 2024, Claimant filed a response in opposition of the Motion to Assess, arguing that Claimant's claims are not frivolous and Respondents NTS, Falato and Capco's request for attorneys' fees is appropriate only at the lawsuit's inception. The Panel heard oral arguments on the Motion to Assess during the final hearing.

On May 15, 2024, Claimant filed a voluntary dismissal with prejudice of claims against Respondent Roberts. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim against Respondent Roberts.

The parties had the opportunity to present oral argument and evidence on the request for expungement at the evidentiary hearing. Respondents Falato and Capco participated in person at the evidentiary hearing. Claimant opposed the request for expungement.

The Panel noted Respondents Falato and Capco's representation that a prior arbitration panel or court has not previously ruled on expungement of the same occurrences in the CRD.

The Panel relied upon the following documentary or other evidence: Respondents' exhibits 3, 8, 10, 11, 12, 13, 19, 20, 21, 35, 36, 39, and 40; the testimony of Respondents' witness and Respondent Falato surrounding the transfer of funds from the Acorn account to Respondent Roberts's spouse's personal account; and the testimony of Respondent Falato regarding his communications with Claimant and Respondent Roberts. There was no documentary evidence or testimony that Claimant suffered any damages due to any action by either of Respondents Falato or Capco.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and any post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are denied in their entirety.
2. Claimant is liable for and shall pay to Respondent NTS the sum of \$116,436.32 in attorneys' fees pursuant to Florida Statutes Sections 57.105 and 682.11.
3. The Panel awards the expungement of all references to Occurrence Number 2249490 from registration records maintained by the CRD for Respondent Robert Alan Falato (CRD Number 2115975) and Occurrence Number 2249510 from the registration records maintained by the CRD for Respondent Constance Ann Snowden Capco (CRD Number 3136284) with the understanding that, pursuant to Rule 2080, Respondents Robert Alan Falato and Constance Ann Snowden Capco must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 13805 of the Code, the Panel has made the following affirmative finding of fact:

The claim, allegation, or information is false.

The Panel has made the above finding based on the following reasons:

- A. The claim that Respondent Falato relied on an email from a non-authorized individual to transfer funds from the Acorn account to the authorized person's personal account was false; rather, it was shown that Respondent NTS's procedures were followed by obtaining a verbal instruction, a written authorization, and a verbal confirmation prior to the transfer.
 - B. The claim that Respondent Falato disclosed private information regarding Claimant to Respondent Roberts in violation of a fiduciary duty to Claimant was false. Rather, the evidence showed that Respondent Roberts was a 20-year client and the trustee of a trust owning 90% interest in the Acorn account and that Claimant, who was attempting to become the authorized individual on the Acorn account, was virtually unknown to Respondent Falato. It was reasonable and arguably a duty that Respondent Falato convey to Respondent Roberts that Claimant was trying to acquire authorization over the account. Further, Respondent Falato owed no fiduciary duty to Claimant, a non-customer.
 - C. The claim that Respondents NTS, Falato and Capco caused Claimant any damages was false. There was no evidence presented that any action by any of these Respondents caused Claimant either financial or reputational harm.
 - D. The Panel found that Respondents NTS, Falato and Capco acted very expeditiously to determine the veracity of Claimant's claim that he was the managing member of Acorn and entitled to be the authorized person on the account. It would have been very strange and a dereliction of duty for them to immediately change the authorized person on the account without consulting their long-time client, Respondent Roberts, as Claimant wanted. Once Respondent Roberts alerted them that she had a multimillion-dollar judgment against Claimant, Respondents NTS, Falato and Capco acted prudently in freezing the account.
4. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages and treble damages, are denied.

FEES

Pursuant to the Code of Arbitration Procedure ("Code"), the following fees are assessed:

Filing Fees

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

Initial Claim Filing Fee	= \$ 2,300.00
Counterclaim Filing Fee for Respondent Falato	= \$ 1,600.00
Counterclaim Filing Fee for Respondent Capco	= \$ 1,600.00

**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 parties Respondents ESI and NTS are each assessed the following:

Member Surcharge	= \$ 4,325.00
Member Process Fee	= \$ 7,300.00

Postponement Fees

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

January 29 – February 2, 2024, postponement requested by Claimant	= \$ WAIVED
---	-------------

Total Postponement Fees	= \$ WAIVED
-------------------------	-------------

The Panel has waived the total postponement fees.

Discovery-Related Motion Fees

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
--	-------------

Respondent ESI submitted one (1) discovery-related motion
Respondent Roberts submitted two (2) discovery-related motions

Total Discovery-Related Motion Fees	= \$ 600.00
-------------------------------------	-------------

The Panel has assessed \$300.00 of the discovery-related motion fees to Claimant.

The Panel has assessed \$300.00 of the discovery-related motion fees jointly and severally to Respondents NTS, Falato, Capco, ESI and Roberts.

Contested Motion for Issuance of Subpoena Fees

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 the Panel @ \$600.00	= \$ 600.00
---	-------------

Total Contested Motion for Issuance of Subpoena Fees	= \$ 600.00
--	-------------

The Panel has assessed \$300.00 of the contested motion for issuance of subpoena fees to Claimant.

The Panel has assessed \$300.00 of the contested motion for issuance of subpoena fees jointly and severally to Respondents NTS, Falato, Capco and Roberts.

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), which lasts four (4) hours or less. Fees associated with these proceedings are:

Six (6) pre-hearing sessions with the Panel @ \$1,575.00/session		= \$ 9,450.00
Pre-Hearing Conferences:		
March 23, 2023	1 session	
May 1, 2023	1 session	
September 20, 2023	1 session	
November 13, 2023	1 session	
January 17, 2024	1 session	
February 1, 2024	1 session	
Eight (8) hearing sessions @ \$1,575.00/session		= \$ 12,600.00
Hearings:		
May 28, 2024	2 sessions	
May 29, 2024	2 sessions	
May 30, 2024	2 sessions	
May 31, 2024	2 sessions	

Total Hearing Session Fees = \$ 22,050.00

The Panel has waived \$1,575.00 of the hearing sessions fees corresponding to the pre-hearing session that took place on January 17, 2024.

The Panel has assessed \$15,750.00 of the hearing session fees to Claimant.

The Panel has assessed \$2,362.50 of the hearing session fees jointly and severally to Respondents NTS, Falato, Capco ESI and Roberts.

The Panel has assessed \$787.50 of the hearing sessions fees to Respondent Roberts.

The Panel has assessed \$787.50 of the hearing sessions fees jointly and severally to Respondents NTS, Falato, Capco and Roberts.

The Panel has assessed \$787.50 of the hearing sessions fees jointly and severally to Respondents NTS, Falato and Capco.

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

ARBITRATION PANEL

Susan S. Bentley	-	Public Arbitrator, Presiding Chairperson
Joel F. Martineau	-	Public Arbitrator
Alison Roberts Hardage	-	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

Susan S. Bentley

Susan S. Bentley
Public Arbitrator, Presiding Chairperson

07/03/2024

Signature Date

Joel F. Martineau

Joel F. Martineau
Public Arbitrator

07/04/2024

Signature Date

Alison Roberts Hardage

Alison Roberts Hardage
Non-Public Arbitrator

07/03/2024

Signature Date

Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

July 05, 2024

Date of Service (For FINRA Dispute Resolution Services use only)