

Award
FINRA Dispute Resolution

In the Matter of the Arbitration Between:

Claimant/Counter-Respondent
Sun Trading LLC

Case Number: 14-03140

vs.

Respondent/Counter-Claimant
Kieran Fitzgerald

Hearing Site: Chicago, Illinois

Nature of the Dispute: Non-Member vs. Associated Person

REPRESENTATION OF PARTIES

For Claimant Sun Trading LLC (“Claimant”): Michael R. Levinson, Esq. and Jordan P. Vick, Esq., Seyfarth Shaw LLP, Chicago, Illinois.

For Respondent Kieran Fitzgerald (“Respondent”): Harry W. Lipman, Esq., Rottenberg Lipman Rich, P.C., New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: October 8, 2014.

Sun Trading LLC signed the Submission Agreement: October 7, 2014.

Answer and Affirmative Defenses to Respondent’s Counterclaims: January 19, 2015.

Answer and Amended Affirmative Defenses to Respondent’s Counterclaims: October 22, 2015.

Statement of Answer and Counterclaims filed on or about: December 18, 2014.

Kieran Fitzgerald signed the Submission Agreement: December 16, 2014.

Response to Claimant’s Amendment Adding the Affirmative Defense of Privilege: November 30, 2015.

Claimant filed a Motion for Leave to Amend its Affirmative Defenses to Respondent’s Counterclaim on or about October 22, 2015. Respondent filed an Opposition to Claimant’s Motion for Leave to Amend its Affirmative Defenses to Respondent’s Counterclaim on or about November 2, 2015. Claimant filed a Reply in Further Support of its Motion for Leave to Amend its Affirmative Defenses to Respondent’s Counterclaim on or about November 9, 2015. Respondent requested oral arguments on Claimant’s Motion for Leave to Amend its Affirmative Defenses to Respondent’s Counterclaim on or about November 11, 2015. Claimant opposed Respondent’s request for oral argument on Claimant’s Motion for Leave to Amend its Affirmative Defenses to Respondent’s Counterclaim on or about November 11, 2015. Respondent filed a Reply to Claimant’s Reply in Further Support of its Motion for Leave to Amend its Affirmative Defenses to Respondent’s Counterclaim and Affidavit of Respondent on or about

November 12, 2015. Claimant filed a Response to Respondent's Reply to Claimant's Reply in Further Support of its Motion for Leave to Amend its Affirmative Defenses to Respondent's Counterclaim and Affidavit of Respondent on or about November 12, 2015.

Claimant filed a Motion to Exclude Certain Evidence and Testimony on or about January 4, 2016.

Respondent filed a Motion to Exclude Evidence and for Sanctions to Remedy Claimant's Spoliation of Relevant Evidence on or about December 30, 2015. Claimant filed a Response in Opposition to Respondent's Motion to Exclude Evidence and for Sanctions to Remedy Claimant's Spoliation of Relevant Evidence on or about January 4, 2016.

CASE SUMMARY

Claimant asserted the following causes of action: breach of Employment and Non-Competition Agreement (breach of contract), breach of fiduciary duty, and violation of the Computer Fraud and Abuse Act codified at 18 U.S.C. § 1030. The causes of action related to Claimant's allegations that Respondent made a series of unauthorized alterations and deletions to one of Claimant's proprietary trading algorithms in order to interfere with the normal operation of the algorithm.

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

In his Counterclaim, Respondent asserted the following causes of action: defamation and expungement. Respondent asserted that Claimant falsely reported on Respondent's Form U5 that Respondent was terminated for cause and that he intentionally made unauthorized changes to Claimant's systems in violation of firm policy and industry standards of conduct.

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

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

Compensatory Damages	Unspecified
Punitive Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

At the close of the hearing, Claimant requested compensatory damages in the amount of \$214,324.35.

In his Counterclaim, Respondent requested:

Compensatory Damages	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified
Expungement	

At the close of the hearing, Respondent requested compensatory damages in the amount of \$15,698,134.05.

OTHER ISSUES CONSIDERED AND DECIDED

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

FINRA administered this case for another SRO pursuant to an agreement.

The Panel granted Claimant's Motion for Leave to Amend its Affirmative Defenses to Respondent's Counterclaim and denied Respondent's request for oral argument in its Order entered on or about November 23, 2015.

The Panel Denied Claimant's Motion to Exclude Certain Evidence and Testimony on the record at the hearing.

The Panel denied Respondent's Motion to Exclude Evidence and for Sanctions to Remedy Claimant's Spoliation of Relevant Evidence on the record at the hearing.

The Panel designated the court reporter's transcript as the official record of the hearing.

The 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 the evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Sun Trading LLC's claims, each and all, are denied;
2. Sun Trading LLC is liable for and shall pay to Kieran Fitzgerald the sum of \$1,335,000.00 in compensatory damages;
3. The Panel recommends that the Reason for Termination and the Termination Explanation in Section 3 of Kieran Fitzgerald's Form U5 filed by Sun Trading LLC on March 19, 2014, and maintained by the Central Registration Depository ("CRD") be expunged; the Reason for Termination should be changed to "Voluntary" and the Termination Explanation should be left blank.

The Panel further recommends the expungement of the “Yes” answers to Questions 7B and 7(F)1 on Kieran Fitzgerald’s Form U5 filed by Sun Trading LLC on March 19, 2014 and maintained by the CRD. The “Yes” answers shall be changed to “No” and the accompanying Internal Review and Termination Disclosure Reporting Pages shall be deleted in their entirety.

The Panel finds that Kieran Fitzgerald (CRD # 5956978) voluntarily resigned and there was insufficient evidence to support Sun Trading LLC’s allegations that Kieran Fitzgerald destroyed Sun Trading LLC’s property, made changes to Sun Trading LLC’s system, or violated industry standards. As such, all references to misconduct asserted by Sun Trading LLC shall be deleted.

These recommendations are based on the defamatory nature of the information. These recommendations apply to any subsequent disclosures concerning this event, including but not limited to the U4 Amendment filed on September 12, 2014 by GTS Securities LLC (CRD #149224).

The Form U5 is not automatically amended to include the changes indicated above. Kieran Fitzgerald must forward a copy of this Award to FINRA’s Registration and Disclosure Department for the amendments to be incorporated into the Form U5.

4. Any and all relief not specifically addressed herein, including punitive damages, sanctions, and attorneys’ fees, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial Claim Filing Fee	= \$ 1,500.00
Counterclaim Filing Fee	= \$ 1,250.00

**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, Sun Trading LLC is assessed the following:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Processing Fee	= \$ 750.00
Hearing Processing Fee	= \$ 2,200.00

Adjournment Fees

Adjournment granted during these proceedings for which fees were assessed:

November 17-19, 2015, adjournment requested jointly Waived

Discovery-Related Motion Fees

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	=\$ 800.00
Claimant submitted one (1) discovery-related motion	
<u>Respondent submitted three (3) discovery-related motions</u>	
<hr/> Total Discovery-Related Motion Fees	<hr/> =\$ 800.00

The Panel has assessed \$800.00 of the discovery-related motion fees to Sun Trading LLC.

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:

Three (3) Pre-hearing sessions with a single arbitrator @ \$450.00/session	=\$ 1,350.00
Pre-hearing conference: July 7, 2015 1 session	
August 11, 2015 1 session	
August 13, 2015 1 session	
One (1) Pre-hearing session with the Panel @ \$1,000.00/session	=\$ 1,000.00
Pre-hearing conference: May 5, 2015 1 session	
Eleven (11) Hearing sessions @ \$1,000.00/session	=\$11,000.00
Hearing Dates: January 5, 2016 2 sessions	
January 6, 2016 1 session	
January 7, 2016 2 sessions	
February 29, 2016 2 sessions	
March 1, 2016 2 sessions	
March 2, 2016 2 sessions	
<hr/> Total Hearing Session Fees	<hr/> = \$13,350.00

The Panel has assessed \$13,350.00 of the hearing session fees to Sun Trading LLC.


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

ARBITRATION PANEL

Lee H. Goodman	-	Public Arbitrator, Presiding Chairperson
Leon Fox	-	Public Arbitrator
Georgia K. Fountoulakis	-	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



Lee H. Goodman
Public Arbitrator, Presiding Chairperson

MARCH 17, 2016
Signature Date

Leon Fox
Public Arbitrator

Signature Date

Georgia K. Fountoulakis
Non-Public Arbitrator

Signature Date

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

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Leon Fox	-	Public Arbitrator
Georgia K. Fountoulakis	-	Non-Public Arbitrator

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Public Arbitrator, Presiding Chairperson

Signature Date

Leon Fox

Leon Fox
Public Arbitrator

Signature Date

Georgia K. Fountoulakis
Non-Public Arbitrator

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Lee H. Goodman
Public Arbitrator, Presiding Chairperson

Signature Date

Leon Fox
Public Arbitrator

Signature Date

Georgia Fountoulakis

Georgia K. Fountoulakis
Non-Public Arbitrator

March 17, 2016
Signature Date

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