

**Award
FINRA Dispute Resolution**

In the Matter of the Arbitration Between:

Citigroup Global Markets Inc. (Claimant) vs. [REDACTED] (Respondent)

Case Number: 09-02278

Hearing Site: New York, New York

Nature of the Dispute: Member vs. Associated Person.

REPRESENTATION OF PARTIES

Claimant Citigroup Global Markets, Inc., hereinafter referred to as "Claimant": Mark J. Alonso, Esq., Catania T. Facher, Esq., and Lauren R. Fox, Esq., Alonso, Andalkar, Toro, Facher & Mac Avoy, P.C., New York, NY.

Respondent [REDACTED], hereinafter referred to as "Respondent": Robert D. Kraus, Esq., and Geoffrey A. Mort, Esq., Kraus & Zuchlewski LLP, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: April 23, 2009.
Claimant signed the Submission Agreement: June 2, 2009.

Statement of Answer filed by Respondent on or about: December 24, 2009.
Respondent did not sign the Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: mistaken payment and unjust enrichment.

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

RELIEF REQUESTED

In the Statement of Claim, Claimant requested compensatory damages in the amount of \$900,000.00 plus interest from May 9, 2008, costs, fees, disbursements, attorneys' fees, and such other and further relief as the Arbitration Panel may deem just and equitable.

Respondent requested that Claimant's claims be denied in their entirety.

OTHER ISSUES CONSIDERED AND DECIDED

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

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Respondent did not file with FINRA Dispute Resolution a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code and having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

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.

EXPLAINED DECISION

Claimant seeks to recover one of two \$900,000.00 payments made to Respondent, a former employee of Claimant. Respondent had worked for Claimant for 14 years and was a Managing Director in 2007.

In July 2007, Claimant agreed to pay Respondent \$900,000.00 as a "guaranteed incentive and retention award" payable no later than March 15, 2008, provided Respondent did not voluntarily terminate his employment. Respondent was not terminated for cause nor did he voluntarily terminate his employment. Claimant paid Respondent this \$900,000.00 on January 29, 2008.

In January 2008, Claimant and Respondent entered into a "Separation Agreement and Release" which provided for, among other things, a \$900,000.00 special payment to Respondent because of the termination of Respondent's employment with Claimant due to a reduction in the workforce. Both Claimant and Respondent abided by and performed in accordance with the terms of both agreements.

Claimant asserts that the \$900,000.00 special payment provided for in the January, 2008 Separation Agreement was supposed to supplant, not supplement the guaranteed incentive and retention award and that Respondent in essence received a \$900,000.00 payment in error.

The Panel finds that Claimant and Respondent entered into two separate and enforceable agreements. The Panel further finds that the \$900,000.00 guaranteed incentive and retention award was not part of the consideration for the separation agreement. While Claimant may not have wished to twice pay Respondent \$900,000.00, Claimant drafted two separate contracts calling for such payments, and made payments pursuant to those contracts. The Panel finds unpersuasive Claimant's arguments for equitable relief to vitiate contracts which it drafted and executed and which both parties performed.

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. Claimant's claims are denied in their entirety.
2. Any and all relief not specifically addressed herein is denied with prejudice.