

**Award**  
**FINRA Office of Dispute Resolution**

---

In the Matter of the Arbitration Between:

Claimant/Counter-Respondent  
Michael Gerard Rom

Case Number: 17-00087

vs.

Respondents/Counter-Claimants  
Philip Edward Steele  
First Financial Services LLC

Hearing Site: San Francisco, California

---

Nature of the Disputes: Associated Person vs. Associated Person and Non-Member  
Associated Person and Non-Member vs. Associated Person

**REPRESENTATION OF PARTIES**

For Claimant/Counter-Respondent Michael Gerard Rom ("Rom"): Robert L. Gonser, Esq., Gonser Law PC, Lafayette, California.

For Respondents/Counter-Claimants Philip Edward Steele ("Steele") and First Financial Services LLC ("FFS"): Jeffrey L. Fillerup, Esq., Rincon Law LLP, San Francisco, California.

**CASE INFORMATION**

Statement of Claim filed: January 4, 2017.

Answer to Counterclaim filed by Rom: April 11, 2017.

Rom signed the Submission Agreement: January 3, 2017.

Statement of Answer and Counterclaim filed by Steele and FFS on or about: March 23, 2017.

Steele signed the Submission Agreement: March 23, 2017.

FFS signed the Submission Agreement: May 15, 2017.

**CASE SUMMARY**

Rom asserted the following causes of action against Steele: 1) breach of fiduciary duty; 2) negligent misrepresentation; 3) fraud; 4) conversion; 5) breach of oral contract; 6) money had and received; 7) unjust enrichment; and 8) constructive trust. Rom also asserted the following causes of action against Steele and FFS: 1) breach of written contract; and 2) breach of the covenant of good faith and fair dealing. The causes of action relate to a business partnership between Rom and Steele, working under the umbrella of FFS.

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

In the Counterclaim, Steele and FFS asserted the following causes of action: 1) declaratory relief as to Rom's claimed interest in FFS; 2) declaratory relief as to Rom's claims for payments by FFS; 3) declaratory relief as to termination of the memorandum agreement; 4) breach of the memorandum agreement; 5) declaratory relief as to termination of Pension Architects Distributors, Inc.; 6) breach of fiduciary duty, fraud, negligence, and breach of the implied covenant of good faith and fair dealing; and 7) fraud and negligence.

Unless specifically admitted in the Statement of Answer to the Counterclaim, Rom denied the allegations made in the Counterclaim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, and Answer to the Counterclaim, Rom requested:

1. General damages;
2. Compensatory damages in an amount estimated to exceed \$1.4 million to be proven at hearing;
3. Disgorgement of ill-gotten gains;
4. An accounting;
5. Punitive and exemplary damages as to fraud and conversion;
6. Declaratory and injunctive relief;
7. Costs of arbitration incurred; and
8. Any and all such other relief as the Panel may deem just and proper.

In the Statement of Answer and Counterclaim, Steele and FFS requested:

1. Denial of all of the claims alleged in Rom's Statement of Claim;
2. No relief to Rom in connection with any of the claims alleged in his Statement of Claim;
3. As to the Fourth, Sixth, and Seventh causes of action in the Counterclaim, damages in an amount to be determined at the arbitration hearing;
4. As to the First, Second, Third, and Fifth causes of action in the Counterclaim, for declaratory relief as alleged in those causes of action;
5. Costs incurred; and
6. Such other and further relief as the Panel deems just and reasonable.

At the close of the hearing, Rom requested \$3,421,191.00 in damages.

At the close of the hearing, Steele and FFS requested \$1,924,197.00 in damages.

### **OTHER ISSUES CONSIDERED AND DECIDED**

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

FFS is not a member of FINRA. On January 18, 2017, Claimant filed copies of a court order dated October 19, 2016 issued by Judge Jill C. Fammin of the Superior Court of

the State of California County of Contra Costa, Martinez, granting FFS and Steele's motion to compel arbitration. In addition, by executing a FINRA Arbitration Submission Agreement, answering the claim and filing a counterclaim, FFS voluntarily submitted the present matter in controversy to arbitration in accordance with the FINRA By-Laws, Rules, and the Code of Arbitration Procedure ("Code"). Therefore, the Panel determined that FFS is bound by the determination of the Panel on all issues submitted.

At the time Arbitrator Douglas W. Oldfield was appointed to the case, he was classified as a public arbitrator. By letter dated September 19, 2017, FINRA Office of Dispute Resolution informed the parties that due to a recent disclosure, Mr. Oldfield is no longer classified as a public arbitrator. Mr. Oldfield restated the disclosure at the evidentiary hearing and all parties accepted the composition of the Panel.

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

1. Steele and FFS are jointly and severally liable for and shall pay to Rom the amount of \$1,176,000.00 in compensatory damages.
2. Steele and FFS are jointly and severally liable for and shall pay to Rom the amount of \$600.00 as reimbursement for the non-refundable portion of the initial claim filing fee previously paid by Rom to FINRA Office of Dispute Resolution.
3. Steele and FFS's Counterclaim is denied in its entirety.
4. Any and all claims for relief not specifically addressed herein, including punitive and exemplary damages, 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	= \$2,000.00
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 Rom's former firm, United Planners' Financial Services is assessed the following:

Member Surcharge	=	\$3,025.00
Member Process Fee	=	\$6,175.00

**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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), 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: September 25, 2017	1 session	

One (1) pre-hearing session with the Panel @ \$1,400.00/session	=	\$1,400.00
Pre-hearing conference: May 11, 2017	1 session	

Ten (10) hearing sessions @ \$1,400.00/session	=	\$14,000.00
Hearing Dates:		
November 6, 2017	2 sessions	
November 7, 2017	2 sessions	
November 8, 2017	2 sessions	
November 9, 2017	2 sessions	
November 10, 2017	2 sessions	

---

Total Hearing Session Fees	=	\$15,850.00
----------------------------	---	-------------

The Panel has assessed \$15,850.00 of the hearing session fees jointly and severally to Steele and FFS.


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

**ARBITRATION PANEL**

Barbara M. Anscher	-	Public Arbitrator, Presiding Chairperson
Douglas W. Oldfield	-	Public Arbitrator
Jeffrey Scott Winaker	-	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**

  
\_\_\_\_\_  
Barbara M. Anscher  
Public Arbitrator, Presiding Chairperson

11-22-17  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Douglas W. Oldfield  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Jeffrey Scott Winaker  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

November 24, 2017  
\_\_\_\_\_  
Date of Service (For FINRA Office of Dispute Resolution office use only)

**ARBITRATION PANEL**

Barbara M. Anscher	-	Public Arbitrator, Presiding Chairperson
Douglas W. Oldfield	-	Public Arbitrator
Jeffrey Scott Winaker	-	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**

---

Barbara M. Anscher  
Public Arbitrator, Presiding Chairperson



---

Signature Date

11/22/17

---

Douglas W. Oldfield  
Public Arbitrator

---

Signature Date

---

Jeffrey Scott Winaker  
Non-Public Arbitrator

---

Signature Date

November 24, 2017  
Date of Service (For FINRA Office of Dispute Resolution office use only)

**ARBITRATION PANEL**

Barbara M. Anscher	-	Public Arbitrator, Presiding Chairperson
Douglas W. Oldfield	-	Public Arbitrator
Jeffrey Scott Winaker	-	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**

\_\_\_\_\_  
Barbara M. Anscher  
Public Arbitrator, Presiding Chairperson

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Douglas W. Oldfield  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Jeffrey Scott Winaker  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

November 24, 2017  
Date of Service (For FINRA Office of Dispute Resolution office use only)

11 / 22 / 17