

**Award  
FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimant/Counter-Respondent  
Ryan P. Romines

Case Number: 11-00633

vs.

Respondent/Counter-Claimant  
Joseph T. Gavigan

Hearing Site: San Francisco, California

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Nature of the Dispute: Associated Person vs. Associated Person  
Associated Person vs. Associated Person

**REPRESENTATION OF PARTIES**

Claimant/Counter-Respondent Ryan P. Romines, hereinafter referred to as "Claimant":  
Montgomery G. Griffin, Esq., Law Offices of Montgomery G. Griffin, Newport Beach,  
California and Ron Romines, Esq., Law Offices of Ron Romines, Palo Alto, California.

Respondent/Counter-Claimant Joseph T. Gavigan, hereinafter referred to as  
"Respondent": James W. Denison, Esq., Cummins & White, LLP, Newport Beach,  
California.

**CASE INFORMATION**

Statement of Claim filed on or about: February 11, 2011

Claimant signed the Submission Agreement: February 11, 2011

Statement of Answer and Counterclaim filed by Respondent on or about: April 28, 2011

Respondent signed the Submission Agreement: April 27, 2011

Statement of Answer to the Counterclaim filed by Claimant on or about: June 1, 2011

**CASE SUMMARY**

Claimant asserted the following causes of action: fraud, negligent misrepresentation,  
breach of implied covenant of good faith and fair dealing, tortious interference and  
defamation. The causes of action relate to Claimant's purchase of Respondent's book  
of business following Respondent's termination from Ameriprise Financial Services, Inc.

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: quantum meruit, fraud, negligent misrepresentation, breach of contract, defamation and tortious interference with prospective economic advantage.

Unless specifically admitted in his Answer, Claimant denied the allegations made in the Counterclaim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

1. Compensatory damages, including, but not limited to, Claimant's lost income, subject to proof at the hearing;
2. Restitution;
3. Reimbursement of the \$28,970.00 paid to Respondent;
4. Interest at the legal rate of 10%;
5. An order declaring that there are no additional funds owed by Claimant to Respondent;
6. An order declaring that Respondent shall have no further contact or communication with any of the customers contained on the customer list provided to Claimant;
7. Punitive damages;
8. Attorneys' fees and costs; and
9. Such other and further relief as deemed appropriate by the Panel.

At the close of the hearing, Claimant withdrew his request for money damages, punitive damages and attorneys' fees.

In his Answer and Counterclaim, Respondent requested:

1. Restitution of the fair value of Respondent's franchise business;
2. Pre-judgment interest;
3. Compensatory damages;
4. Exemplary damages;
5. Costs; and
6. Such other and further relief as the Panel deems appropriate.

In his Answer to the Counterclaim, Claimant requested:

1. Respondent's Counterclaim be dismissed in its entirety;
2. Costs and expenses; and
3. Such other and further relief as the Panel deems appropriate.

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

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

On August 25, 2011, Respondent submitted a Motion to Change Venue with a Memorandum of Points and Authorities and a Declaration of James W. Denison, Esq.

On September 6, 2011, Claimant submitted a response opposing the motion. By Order dated September 16, 2011, the Panel denied Respondent's motion.

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. Respondent shall pay nothing to Claimant.
2. The Panel reached no conclusion as to the handling by Claimant of the accounts transferred by Respondent.
3. The accounts transferred by Respondent to Claimant, to the extent they are presently accounts at Ameriprise Financial Services, Inc. handled by Claimant, will continue to be his accounts and Respondent shall have no interest in any income derived from these accounts.
4. Respondent's Counterclaim is denied in its entirety.
5. Any and all relief not specifically addressed herein, including exemplary damages, 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	= \$ 600.00
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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as Claimant's current firm and Respondent's former firm, Ameriprise Financial Services, Inc. is assessed the following:

Member Surcharge	= \$ 600.00
Pre-Hearing Processing Fee	= \$ 750.00
Hearing Processing Fee	= \$ 2,200.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

<u>December 5 – 7, 2011, adjournment by Claimant</u>	<u>= \$ 1,000.00</u>
Total adjournment fees	= \$ 1,000.00

1. The Panel has assessed \$500.00 of the adjournment fees to Claimant.
2. The Panel has assessed \$500.00 of the adjournment fees to Respondent.

**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: October 14, 2011	1 session
Two (2) Pre-hearing sessions with the Panel @ \$1,000.00/session	= \$ 2,000.00
Pre-hearing conferences: August 11, 2011	1 session
September 16, 2011	1 session
Eight (8) Hearing sessions @ \$1,000.00/session	= \$ 8,000.00
Hearing Dates: June 4, 2012	2 sessions
June 5, 2012	2 sessions
June 6, 2012	2 sessions
June 7, 2012	2 sessions
<hr/> Total Hearing Session Fees	<hr/> = \$10,450.00

1. The Panel has assessed \$5,225.00 of the hearing session fees to Claimant.
2. The Panel has assessed \$5,225.00 of the hearing session fees to Respondent.

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

**ARBITRATION PANEL**

Reed H. Bement	-	Public Arbitrator, Presiding Chairperson
William Ziering	-	Public Arbitrator
Douglas J. Pavese	-	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**

Reed H. Bement  
Reed H. Bement  
Public Arbitrator, Presiding Chairperson

6/23/2012  
Signature Date

\_\_\_\_\_  
William Ziering  
Public Arbitrator

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

\_\_\_\_\_  
Douglas J. Pavese  
Non-Public Arbitrator

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Signature Date

June 25, 2012  
Date of Service (For FINRA Dispute Resolution office use only)

**ARBITRATION PANEL**

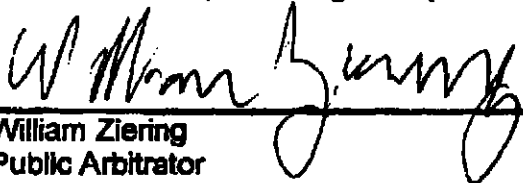
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