

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

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In the Matter of the Arbitration Between:

Claimants

Christian N. Cram  
Andrew E. Firstman  
Mark G. Horncastle

Case Number: 17-01632

vs.

Respondent

Credit Suisse Securities (USA) LLC

Hearing Site: Atlanta, Georgia

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Nature of the Dispute: Associated Persons vs. Member

This case was decided by a majority-public panel.

**REPRESENTATION OF PARTIES**

For Claimants Christian N. Cram (“Cram”), Andrew E. Firstman (“Firstman”) and Mark G. Horncastle (“Horncastle”): Jessica A. Murzyn, Esq., Rich, Intelisano & Katz LLP, New York, New York.

For Respondent Credit Suisse Securities (USA) LLC: Janene Marasciullo, Esq., Epstein Becker & Green, P.C., New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: June 20, 2017.

Firstman signed the Submission Agreement: June 15, 2017.

Horncastle signed the Submission Agreement: June 15, 2017.

Cram signed the Submission Agreement: June 18, 2017.

Statement of Answer and Counterclaim filed by Respondent on or about: August 31, 2017.

Credit Suisse Securities (USA) LLC signed the Submission Agreement: August 31, 2017.

Claimants’ Answer to Counterclaim filed on or about: September 20, 2017.

**CASE SUMMARY**

Claimants asserted the following causes of action: constructive discharge; fraudulent inducement; fraudulent intentional and/or negligent misrepresentation; breach of contract; breach of the covenant of good faith & fair dealing; unjust enrichment; conversion; promissory estoppel; retaliation; breach of securities industry rules, regulations and standard of conduct (including, but not limited to, its unlawful conduct in

violation of FINRA Rule 2010); violations of various state labor laws; and violation of N.Y. Lab. Law §198 and related provisions. The causes of action relate to Claimants' terminations of employment with Respondent and Respondent's alleged failure to pay compensation allegedly owed to Claimants.

Unless specifically admitted in the Statement of Answer and Counterclaim, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In its Counterclaim, Respondent asserted the following causes of action: breach of contract; breach of fiduciary duty; unfair competition; misappropriation of trade secrets; unjust enrichment; and declaratory relief against Claimants (unvested deferred contingent Awards).

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested: deferred compensation in the amount of approximately \$1,100,000.00 for Claimant Firstman; \$590,000.00 for Claimant Horncastle; \$35,000.00 for Claimant Cram; earned but unpaid bonuses in an amount to be determined at trial; unpaid revenue trailers of at least \$840,000.00; compensation for Respondent's unlawful, fraudulent misrepresentations, in an amount to be determined by the Panel; compensation for Respondent's violation of various industry rules, state labor laws relating to accrued but unused vacation time, earned commissions and fees on assets; compensatory damages; punitive damages; interest at the legal rate; attorneys' fees and costs pursuant to applicable statutes; costs, expert and witness fees and administrative expenses; and any other and further relief the Panel found just and equitable.

In the Statement of Answer and Counterclaim, Respondent requested: damages in an amount to be ascertained at the Arbitration hearing; full repayment of compensation that was advanced to Firstman in the amount of \$1,945.00, plus applicable interest; full repayment of the overpayment of compensation that was advanced to Horncastle in the amount of \$9,831.00, plus applicable interest; full repayment of the overpayment of compensation that was advanced to Cram in the amount of \$2,437.00, plus applicable interest; a declaration that Claimants are not entitled to vesting or delivery of their unvested deferred contingent awards under the Share Plan and related documentation, whether under a legal theory of constructive termination or otherwise; and such other and further relief as the Panel deemed just and proper.

In its Answer to the Counterclaim, Claimants requested the denial and dismissal of the counterclaim.

During the evidentiary hearing, Claimants requested compensatory damages in the amount of \$3,689,122.00, inclusive of interest; attorneys' fees in the amount of \$1,209,707.00; and costs in the amount of \$97,595.00.

During the evidentiary hearing, Respondent requested \$14,213.00 in overpayments and \$100,011.58 in compensatory damages.

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

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

On December 21, 2018, following Claimants' case-in-chief, Respondent moved to dismiss Claimants' claims pursuant FINRA Rule 13504(b), stating that Claimants failed to meet their burden of proof on deferred compensation and trailer claims. Claimants argued that the Motion should be denied because Claimants presented credible evidence to support their request for relief. Thereafter, the Panel denied Respondent's Motion.

The parties present at the hearing 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, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable for and shall pay to Claimant Firstman the sum of \$1,010,000.00 in compensatory damages.
2. Respondent is liable for and shall pay to Claimant Horncastle the sum of \$660,000.00 in compensatory damages.
3. Respondent is liable for and shall pay to Claimant Cram the sum of \$85,000.00 in compensatory damages.
4. Respondent is liable for and shall pay to Claimants interest at the rate of 7% on the above stated amounts, pursuant to Ga. Code Ann. §§ 7-4-2 and 13-6-13 law starting on October 20, 2015, until the date of this Award.
5. Respondent is liable for and shall pay to Claimants costs in the amount of \$97,596.47.
6. Respondent is liable for and shall pay to Claimants attorneys' fees in the amount of \$719,000.00 pursuant to Ga. Code Ann. § 13-6-11.
7. Respondent is liable for and shall pay to Claimants the sum of \$375.00 representing reimbursement of the non-refundable portion of the claim filing fee previously paid by Claimants to FINRA Dispute Resolution.
8. Respondent's Counterclaim is denied.
9. Any and all claims for relief not specifically addressed herein, including Claimants' request for punitive damages, are denied.

## FEES

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

### Filing Fees

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

Initial Claim Filing Fee	=\$ 1,575.00
Counterclaim Filing Fee	=\$ 1,050.00

*\*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 a party, Respondent is assessed the following:

Member Surcharge	=\$ 1,900.00
Member Process Fee	=\$ 3,750.00

### Postponement Fees

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

May 28-31, 2019, Joint postponement	WAIVED
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Total Postponement Fees	WAIVED

The Panel has waived the postponement fees.

### Discovery-Related Motion Fee

Fees apply for each decision rendered on a discovery-related motion.

Six (6) decisions on discovery-related motions on the papers with one (1) arbitrator @ \$200.00/decision	=\$ 1,200.00
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Claimants submitted two (2) discovery-related motions  
Respondent submitted four (4) discovery-related motions

Total Discovery-Related Motion Fees	=\$ 1,200.00
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The Panel has assessed the total discovery-related motion fees of \$1,200.00 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



**ARBITRATION PANEL**

Barbara Black	-	Public Arbitrator, Presiding Chairperson
Birdel Franklin Jackson, III	-	Public Arbitrator
Karen M. Kassouf	-	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 Black***

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Barbara Black  
Public Arbitrator, Presiding Chairperson

09/05/2019

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

***Birdel Franklin Jackson, III***

\_\_\_\_\_  
Birdel Franklin Jackson, III  
Public Arbitrator

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

***Karen M Kassouf***

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Karen M. Kassouf  
Non-Public Arbitrator

09/05/2019

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

September 06, 2019

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