

**AWARD**  
**FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of Claimant

Tom Campbell

vs.

Case Number: 10-00378  
Hearing Site: Detroit, Michigan

Name of Respondent

Sigma Financial Corporation

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**NATURE OF THE DISPUTE**

Associated Person v. Member

**REPRESENTATION OF PARTIES**

Tom Campbell a/k/a Thomas Campbell, Jr. ("Claimant") was represented by Vincent Imbesi, Esq., Weiss Imbesi PLLC, New York, New York.

Sigma Financial Corporation ("Respondent" or "Sigma") was represented by Gary M. Saretsky, Esq. and Janine M. Lucas, Esq., Saretsky Hart Michaels & Gould PC, Birmingham, Michigan.

**CASE INFORMATION**

The Statement of Claim was filed on or about January 25, 2010. The Submission Agreement of Claimant was signed on or about November 30, 2009.

The Statement of Answer and Motion to Strike was filed by Respondent on or about April 1, 2010. The Submission Agreement of Respondent was signed on or about April 1, 2010.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty and breach of the implied covenant of good faith and fair dealing; whistleblower retaliation; negligent supervision; professional negligence; intentional infliction of emotional distress; breach of contract; defamation of character; libel and/or slander; tortious interference with a contract and prospective business relations; and false and defamatory statements on Claimant's Form U5. Claimant asserted that Respondent intentionally misrepresented the reason for Claimant's termination on Claimant's Form U5.

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

### **RELIEF REQUESTED**

Claimant requested an award in the amount of:

Actual/Compensatory Damages	Unspecified
Exemplary/Punitive Damages	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondent requested that the claims asserted against it be dismissed in their entirety, that certain references in the Statement of Claim be stricken, and that it be awarded its costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

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

The parties settled this dispute except for the issue of expungement. At the recorded telephonic hearing, the Panel considered Claimant's expungement request.

Claimant filed a post-hearing submission on or about October 26, 2012.

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 and the post-hearing submission the Panel has decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Claimant's claims, each and all, having been settled and withdrawn, are dismissed with prejudice;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 3.) The Panel recommends the expungement of the termination explanation from Claimant Tom Campbell's (CRD #1888056) filed by Sigma Financial Corporation on December 5, 2007, and maintained by the Central

Registraticn Depository ("CRD") based on the defamatory nature of the information. The termination explanation shall be expunged and replaced with the following language: "After initially terminating Mr. Campbell's association for an alleged violation of the firm's communication policies and procedures, a FINRA Panel determined that he did not violate the firm's communication policies and procedures." The reason for termination shall remain the same. The Form U5 is not automatically amended to include the changes indicated above. Claimant Tom Campbell must forward a copy of this Award to FINRA's Registration and Disclosure Department for the amendments to be incorporated into the Form U5.

A telephonic conference on Claimant's Motion to Expunge was held on October 16, 2012. At that time, the Panel committed Claimant to make an opening statement at which time he requested the opportunity to file a post hearing brief regarding the proposed language to be added to the U-5, paragraph 3, if the reason for termination was expunged. Counsel for Respondent was also permitted to make an opening statement. During counsel for Claimant's opening statement, he stated that the violations of the communication policies and procedures, which was the reason for termination in paragraph 3 of the U5, was incorrect and untrue. Counsel for Respondent stated that Sigma did believe that the reasons for termination were true. The only witness presented was Mr. Tom Campbell, who was examined by his counsel, Mr. Vincent Imbesi. He stated during his testimony that the original contract with Sigma called for just real termination and that he negotiated to a just cause termination and presented evidence as an attached Exhibit (Exhibit 2 to the Respondent's Answer), which demonstrated that it was negotiated to a just cause termination. He further testified that he was employed from 2003-2007 by Sigma. He also testified that he never violated any of the policies and procedures of Sigma. He stated that Exhibit 3 that was attached to Respondent's Answer, which is a letter to Mr. Campbell, signed by Mr. Bacarella, was not received prior to termination, but sent to him after his termination. He further testified that he was never informed of any violations of Sigma of any of the policies and procedures. Mr. Campbell further testified that an initial audit conducted by Sigma did disclose that he had an AOL account in 2003 as well as a Gmail account. He stated that these accounts were not used for Sigma business. With respect to the allegations contained in the aforementioned letter of Mr. Bacarella, he stated that he never used non-conforming fax cover sheets in response to paragraph 2. He stated that he never violated Sigma's policies regarding the books and records. After he was advised of some corrections they did in the 2005 audit; and, he said he never made an

unbalanced sales representation as alleged in paragraph 5. He testified that the allegation in paragraph 5 of Mr. Bacarella's letter that the annuity sale was not reviewed was incorrect, that it was reviewed. He further stated that the firm's element credit allegations were also untrue. He testified in July of 2007 that he was informed by Mr. Booker that his employment would be terminated effective in December of 2007. The representative of Sigma was offered an opportunity to cross-examine Mr. Campbell which was declined.

The Panel conducted an executive session to discuss what evidence may be appropriate to illicit the testimony between the parties. After the executive session, the Panel asked counsel if they still wish to submit post hearing briefs. Counsel for the claimant indicated that they still wish to submit a post hearing brief that would include specific language to replace the language in paragraph 3 of the U-5.

Counsel for Respondent stated in his closing statement that they were resting on the pleadings filed to date. The Panel asked if there are post hearing briefs that Sigma was filing, and they responded yes. The Panel did inquire of Sigma if it had evidence that the fax cover sheets identified were ever used by Claimant in the use of Sigma business. The reason for this inquiry is because no evidence had been presented that would demonstrate that the email addresses or fax cover sheet were in fact ever used by the Claimant. Sigma indicated that it did have such examples. Counsel for Claimant indicated that it would be unfair to have additional evidence supplied by way of post hearing briefs.

The Panel retired to executive session to consider those arguments and returned to inform counsel that it would make the decision based on the evidence at the close of the hearing and each party would be able to submit post hearing briefs within two weeks through FINRA and that no additional evidence would be considered by the Panel. The Panel notes that this case was initially filed on November 30, 2009 and assigned a case number in early 2010. Sigma has had ample opportunity to provide evidence in this matter prior to the expungement hearing scheduled for October 16, to show that the inappropriate emails and faxes were in fact used by the Claimant and the conduct of Sigma business. In spite of that ample opportunity, Sigma has not provided on a timely basis additional evidence to prove that Claimant Tom Campbell did violate the firm's communication policies and procedures. The record contains no evidence that Mr. Campbell used either email, as identified in Respondent's information, nor the inappropriate fax cover sheet identified in its material as one of the reasons for his termination.

This Arbitration Panel finds that the record shows no evidence to support Sigma's position that Mr. Campbell, the Claimant, was terminated for violation of the firm's communication policies and procedures. Therefore, this Panel finds that the claim, allegation or information is false and defamatory, and thereby orders the expungement of Tom Campbell, Jr.'s U5, paragraph 3, termination explanation.

A hearing was conducted to determine the subject expungement request. The Respondent did not offer any evidence to contradict Mr. Campbell's testimony that he did not violate the firm's communication policies and procedures. Pursuant to the FINRA Code of Arbitration, Mr. Campbell's Form U5, CRD and any related reporting documents should be amended as set forth within this award. The Panel is aware that since this expungement request does not involve a customer related dispute, said reporting documents can be amended without the further costs and intervention of a Court, should the Panel determine that the reason for termination set forth in the subject Form U5 is defamatory in nature. Given that Mr. Campbell testified that said reason for termination was incorrect and no evidence was submitted to the Panel to contradict his testimony (including evidence to even establish the existence of personal e-mail accounts and facsimile pages) we hereby determine that Mr. Campbell's expungement request is granted and should be amended pursuant to the FINRA Code of Arbitration Procedure without further cost of court intervention; and

- 4.) Any relief not specifically enumerated, including punitive damages and attorneys' fees, is dismissed with prejudice.

### FEES

Pursuant to the Code, the following fees are assessed:

#### Filing Fees

FINRA Dispute Resolution will retain the non-refundable filing fees\* for each claim:

Initial Claim filing fee = \$ 1,250.00

*\*The filing fee is made up of a non-refundable and a refundable portion.*

The Panel has waived the non-refundable portion of Claimant's filing fee.

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### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Sigma Financial Corporation is assessed the following:

Member surcharge	= \$ 1,500.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,200.00

### **Adjournment Fees**

Adjournments granted during these proceedings:

May 17-20, 2011, adjournment requested by Respondent	= \$ 1,000.00
May 15-17, 2012, adjournment requested jointly	= \$ 1,000.00
<u>Total Adjournment Fees</u>	<u>= \$ 2,000.00</u>

The Panel has assessed \$2,000.00 of the adjournment fees to Sigma Financial Corporation.

### **Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

The hearing beginning May 15, 2012, was adjourned on May 11, 2012.	= \$ 300.00
<u>Total Three Day-Cancellation Fees</u>	<u>= \$ 300.00</u>

The Panel has assessed \$300.00 of the three-day cancellation fees to Sigma Financial Corporation.

### **Hearing Session Fees and Assessments**

The Panel has assessed hearing session fees for each hearing session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$1,000.00	= \$ 1,000.00
Pre-hearing conference: July 7, 2010	1 session

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One (1) Hearing session on expungement x \$1,000.00 = \$ 1,000.00

Hearing Date: October 16, 2012 1 session

Total Hearing Session Fees = \$ 2,000.00

The Panel has assessed \$2,000.00 of the hearing session fees to Sigma Financial Corporation.

### ARBITRATION PANEL

Timothy J. Currier - Public Arbitrator, Presiding Chair

Mark Scarr - Public Arbitrator

James George Timpa - 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:

/s/ Timothy J. Currier  
 Timothy J. Currier  
 Public, Presiding Chair

12/14/12  
 Signature Date

/s/ Mark Scarr  
 Mark Scarr  
 Public Arbitrator

12/14/12  
 Signature Date

/s/ James George Timpa  
 James George Timpa  
 Non-Public Arbitrator

12/14/12  
 Signature Date

12/14/12  
 Date of Service (For FINRA office use only)

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One (1) Hearing session on expungement x \$1,000.00	= \$ 1,000.00
Hearing Date: <u>October 16, 2012 1 session</u>	
Total Hearing Session Fees	= \$ 2,000.00


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Mark Scarr - Public Arbitrator  
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Hearing Date: <u>October 16, 2012</u> 1 session	
<u>Total Hearing Session Fees</u>	<u>= \$ 2,000.00</u>

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12-14-2012  
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