

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimant  
Daniel Michalow

Case Number: 18-03174

vs.

Respondents  
Edward Laurence Fishman  
Julius Ralph Gaudio  
Maximilian Dana Stone  
Eric Karl Wepsic  
D.E. Shaw & Co., L.P.

Hearing Site: New York, New York

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Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

Nature of the Dispute: Non-Member vs. Associated Persons and Non-Member

This matter was decided by an all-public panel pursuant to Rule 13802 of the Code of Arbitration Procedure (“Code”).

**REPRESENTATION OF PARTIES**

For Claimant Daniel Michalow: Dustin Pusch, Esq., and Thomas A. Clare, Esq., Clare Locke LLP, Alexandria, Virginia; Jonathan Harris, Esq., Harris St. Laurent LLP, New York, New York; and Jeremy Wallison, Esq., Wallison & Wallison LLP, New York, New York.

For Respondents Edward Laurence Fishman, Julius Ralph Gaudio, Maximilian Dana Stone, Eric Karl Wepsic, and D.E. Shaw & Co., L.P.: Terri L. Chase, Esq., Jones Day, New York, New York; Saul B. Shapiro, Esq., and Jane Metcalf, Esq., Patterson Belknap Webb & Tyler LLP, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: September 8, 2018.

Amended Statement of Claim filed on or about: March 16, 2020.

Daniel Michalow signed the Submission Agreement: September 8, 2018.

Statement of Answer filed by Respondents on or about: December 5, 2018.

Answer to Amended Statement of Claim filed by Respondents on or about: May 7, 2020.

Amended Answer to Amended Statement of Claim filed by Respondents on or about: September 20, 2021.

Edward Laurence Fishman signed the Submission Agreement: December 13, 2018.  
Julius Ralph Gaudio signed the Submission Agreement: December 13, 2018.  
Maximilian Dana Stone signed the Submission Agreement: December 13, 2018.  
Eric Karl Wepsic signed the Submission Agreement: December 13, 2018.  
D.E. Shaw & Co., L.P. signed the Submission Agreement: December 13, 2018.

### **CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action: defamation; gender discrimination; violation of New York Labor Law §§ 193, 198 et. seq.; breach of contract; and unjust enrichment.

In the Amended Statement of Claim, Claimant asserted the following causes of action: defamation; violation of New York Labor Law §§ 193, 198 et. seq.; breach of contract; and unjust enrichment.

Unless specifically admitted in the Statement of Answer, as amended, Respondents denied the allegations made in the Statement of Claim and Amended Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested defamation damages of \$600,000,000.00; discrimination damages of \$600,000,000.00; damages emanating from Respondents' failure to provide Claimant with his deferred compensation, and his 2018 compensation; punitive damages of \$600,000,000.00; and such other and further relief, including but not limited to, statutory interest, attorneys' fees, filing fees, and costs.

In the Amended Statement of Claim, Claimant requested defamation damages of \$600,000,000.00; damages from Respondents' failure to provide Claimant with his deferred compensation and 2018 prorated compensation with statutory interest; liquidated damages to which he is entitled under New York Labor Law § 198; litigation costs, including attorneys' fees; punitive damages; and such other relief as deemed just and proper, including but not limited to, interest, filing fees, and costs.

In the Statement of Answer, as amended, Respondents requested an award dismissing all of Claimant's claims; ordering Claimant to pay Respondents' costs and attorneys' fees; attorneys' fees and costs in defending the defamation claim; and all other and further relief as deemed just and proper.

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

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

On March 16, 2020, Claimant filed a Motion to Amend the Statement of Claim. On April 8, 2020, Respondents agreed not to oppose Claimant's Motion to Amend the Statement of Claim. By Order dated July 30, 2020, the Panel granted Claimant's Motion to Amend the Statement of Claim.

On September 20, 2021, Respondents filed a Motion to Amend the Statement of Answer. On October 1, 2021, Claimant filed a response opposing the Motion to Amend the Statement of Answer. By Order dated October 10, 2021, the Panel granted Respondents' Motion to Amend the Statement of Answer.

On or about May 8, 2022, the third Arbitrator withdrew from this matter. At the commencement of the evidentiary hearing on May 9, 2022, the parties agreed to continue the hearing with the two remaining Arbitrators.

The Award in this matter may be executed in counterpart copies.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and any post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents are jointly and severally liable for and shall pay to Claimant the sum of \$52,125,000.00 in compensatory damages for defamation. The Panel specifically finds that Claimant did not commit sexual misconduct.
2. Any and all claims for relief not specifically addressed herein, including any requests for liquidated damages, punitive damages, and attorneys' fees, are denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

= \$ 200.00

Initial Claim Filing Fee

Daniel Michalow is assessed a \$200.00 filing fee in accordance with Rule 13802 of the Code. The balance of the non-refundable portion of the filing fee, in the amount of \$ 550.00, is assessed to D.E. Shaw & Co., L.P.

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, as Respondents' firm, D.E. Shaw Securities, L.L.C. is assessed the following:

Member Surcharge = \$ 4,025.00

Member Process Fee = \$ 7,000.00

### **Discovery-Related Motion Fees**

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

Two (2) decisions on discovery-related motions on the papers  
with one (1) Arbitrator @ \$200.00/decision = \$ 400.00

One (1) decision on a discovery-related motion on the papers  
with the Panel @ \$600.00/decision = \$ 600.00

Claimant submitted two (2) discovery-related motions  
Respondents submitted one (1) discovery-related motion

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Total Discovery-Related Motion Fees = \$ 1,000.00

The Panel has assessed \$800.00 of the discovery-related motion fees to Claimant.

The Panel has assessed \$200.00 of the discovery-related motion fees jointly and severally to Respondents.

### **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 Arbitrators, including a pre-hearing conference with the Arbitrators, which lasts four (4) hours or less. Fees associated with these proceedings are:

Seven (7) pre-hearing sessions with a single Arbitrator @ \$450.00/session = \$ 3,150.00

Pre-Hearing Conferences: September 11, 2019 1 session  
November 18, 2019 1 session  
March 24, 2020 1 session  
March 31, 2020 1 session  
April 7, 2020 1 session  
April 14, 2020 1 session  
November 17, 2020 1 session

Eleven (11) pre-hearing sessions with the Panel @ \$1,500.00/session = \$ 16,500.00

Pre-Hearing Conferences: January 28, 2019 1 session  
May 27, 2020 1 session  
June 2, 2020 1 session  
September 14, 2020 1 session  
October 6, 2020 1 session  
January 14, 2021 1 session  
January 28, 2021 1 session  
September 10, 2021 1 session  
October 5, 2021 1 session  
April 19, 2022 1 session  
April 21, 2022 1 session

Forty-Nine (49) hearing sessions @ \$1,500.00/session = \$ 73,500.00

Hearings: October 25, 2021 2 sessions  
October 26, 2021 2 sessions

October 27, 2021	2 sessions
October 28, 2021	2 sessions
November 1, 2021	2 sessions
November 2, 2021	2 sessions
November 3, 2021	2 sessions
November 4, 2021	2 sessions
November 8, 2021	2 sessions
November 9, 2021	2 sessions
November 10, 2021	2 sessions
November 11, 2021	2 sessions
April 25, 2022	2 sessions
April 26, 2022	2 sessions
May 2, 2022	2 sessions
May 3, 2022	2 sessions
May 4, 2022	2 sessions
May 5, 2022	2 sessions
May 9, 2022	2 sessions
May 10, 2022	2 sessions
May 11, 2022	2 sessions
May 12, 2022	1 session
May 18, 2022	2 sessions
May 19, 2022	2 sessions
May 24, 2022	2 sessions

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Total Hearing Session Fees	= \$ 93,150.00
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The Panel has assessed \$46,575.00 of the hearing session fees to Claimant.

The Panel has assessed \$46,575.00 of the hearing session fees jointly and severally to Respondents.

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

**ARBITRATION PANEL**

Jonathan Blank	-	Public Arbitrator, Presiding Chairperson
Richard Lee Mansdoerfer, Jr.	-	Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

**Concurring Arbitrators' Signatures**

***Jonathan Blank***

Jonathan Blank  
Public Arbitrator, Presiding Chairperson

**06/29/2022**

Signature Date

***Richard Lee Mansdoerfer, Jr.***

Richard Lee Mansdoerfer, Jr.  
Public Arbitrator

**06/29/2022**

Signature Date

Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

June 29, 2022

Date of Service (For FINRA Dispute Resolution Services use only)