AMERICAN ARBITRATION ASSOCIATION

Commercial Arbitration Tribunal

AAA Case No. 01-25-0002-3767

JONATHAN DORFMAN,

Claimant,

v.

ELEMENT CAPITAL MANAGEMENT LLC,

Respondent.

Award With Reasons and Legal and Factual Conclusions

I , THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the employment agreement entered into by the above-named parties, and having been duly sworn and having duly heard the proofs and allegations of the parties, and Claimant being represented by Evan Belosa and Gabrielle Lipsitz of McDermott Will & Schulte LLP, and Respondent being represented by Steven Barentzen of the Law Office of Steven Barentzen, hereby AWARD, as follows:

1. Introduction and Procedural History

Pursuant to the clause entitled "Dispute Resolution" in the employment agreement between Jonathan Dorfman ("Mr. Dorfman") and Element Capital Management LLC ("Element") dated August 30, 2017 (the "Employment Agreement"), Mr. Dorfman and Element agreed to resolve any disputes regarding matters under the Employment Agreement, and Mr. Dorfman's employment, by arbitration, with the arbitrator's power limited to interpreting the Employment Agreement. The arbitrator is to "state in writing the reasons for his … award and the legal and factual conclusions underlying the award." Employment Agreement at 19. This document provides the contractually required reasons for, and legal and factual conclusions underlying, the award.

In or about April 2025, a dispute arose concerning the enforceability of the Employment Agreement's non-competition clause. Mr. Dorfman filed a Statement of Claim dated May 16, 2025, seeking a declaration that the clause is unenforceable, and an injunction prohibiting Element from enforcing or threatening to enforce it. Element opposed Mr. Dorfman's claim and

eventually counterclaimed for a finding that the non-compete clause is reasonable and enforceable, and for fees and costs to be assessed against Mr. Dorfman.[1]

Following a discovery process, on September 16, 17, and 18, 2025, the parties, through counsel, presented evidence at an in-person hearing at the offices of the American Arbitration Association in New York City.[2] Based on that evidence and the governing New York state law, my award is that the non-compete clause is enforceable.

2. Factual Findings

Mr. Dorfman has had a long, successful career as an investor, with a focus on what is known as equity capital markets ("ECM"). His most recent position before joining Element was with a firm known as Highbridge Capital as head of its ECM business. Element is a hedge fund that invests using systematic strategies. Emphasizing a team-based approach to do deep research and create and test various investment theses, tools, and strategies, it has been a very successful fund. Before he joined Element, Mr. Dorfman had not engaged in systematic investing of the type Element practices. Indeed, he was drawn to Element because he thought he and an ECM business could benefit from Element's approach to investing.

On or about August 30, 2017, Element and Mr. Dorfman entered a contract (the "Employment Agreement") governing Mr. Dorfman's forthcoming employment with Element. Mr. Dorfman is a highly educated, experienced, sophisticated, and compensated businessperson. He read and understood the Employment Agreement and consulted with his advisors prior to signing it. Indeed, Mr. Dorfman negotiated the terms of his employment directly with Jeffrey Talpins, Element's founder and Chief Investment Officer. After Mr. Dorfman rejected Element's first proposal, although Mr. Talpins would not change the restrictive covenants, he presented a different proposal which Mr. Dorfman further negotiated as to timing and financial terms and eventually accepted.

The contract provided that it would be "effective commencing on or about August 15, 2018 or the earliest date … that you are permitted to commence employment with Element after the lapse or waiver of any notice period or non-compete restrictions relating to your period employer… ." Employment Agreement at 1. More than nine months later, in June 2018, Mr. Dorfman started working for Element under the Employment Agreement.

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[1] Element has not pointed to a legal basis for its request for fees and costs.

[2] Prior to the hearing, Element requested I sign a third-party subpoena for documents from Mr. Dorfman's employer-to-be, Squarepoint Services US LLP. I signed the subpoena, Squarepoint moved to quash it, and I denied the motion. Squarepoint then challenged the subpoena in New York Supreme Court, New York County. I initially left the hearing record open pending court action on the subpoena. The court ultimately set November 18, 2025 to consider Squarepoint's motion. On October 16, 2025, having considered the matter further, I decided to close the record pursuant to Rule 40(a) of Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association (the "Rules"), because I was satisfied that the record was complete. Pursuant to Rule 40(b) of the Rules, the post-hearing briefs having been filed on September 29, 2025, I closed the record as of October 6, 2025.

The Employment Agreement addresses in various ways Mr. Dorfman and Element's agreements regarding what was to happen at the end of Mr. Dorfman's employment with Element. There is a notice period provision, whereby Mr. Dorfman and Element agreed (1) he would provide Element "with at least twenty-six (26) weeks prior written notice" if he intended to terminate his employment, Employment Agreement at 13, and (2) that this notice period was "reasonable and necessary to protect [Element's] Confidential Information… ." Id.

The Employment Agreement also has a Restrictive Covenants section, including non-solicit and non-compete promises. The non-compete clause, which is the subject of this arbitration, states in relevant part:

> At any time during your employment or during the six (6) month period (the "Non-Compete Period") after your employment with Element terminates or ceases for any reason, you will not, except with the advance written approval of Element, directly or indirectly, establish or plan to establish, manage or operate (on your own behalf or on behalf of any third party), be employed by (whether as an employee, director, officer, partner, investor, advisor, consultant or otherwise) or have an interest in any person, firm, corporation, partnership, limited liability company, sole proprietorship, entity or business (including any investment advisory business, investment fund, bank, investment bank or broker-dealer) for which you, directly or indirectly, engage in, make plans to engage in, are involved with, assist with or conduct trading, portfolio management, risk management or advisory or other services in any asset classes, markets or investment products traded by Element while you are or were employed by Element (such restrictions, collectively, the "Non-Compete Covenant").

Employment Agreement at 10-11. "As additional consideration for [Mr. Dorfman's] compliance with the Non-Compete Covenant," Element agreed to continue to pay his base salary during the Non-Compete Period. Id. at 11.

Mr. Dorfman and Element agreed that Element's "Confidential Information" included information

> both of a technical and non-technical nature, relating to the business of Element, its affiliates and predecessors, its actual or anticipated business, its investment strategies, its implementation of systematic trading strategies (and the details thereof), its analysis and development of systematic trading strategies and potential systematic trading strategies, its technology or the implementation or exploitation thereof, including without limitation information pertaining to trading strategies and models, software programs, computer algorithms, investment positions, hedging strategies, trade construction, clients, potential clients, fees, processes, past performance and investment results, business plans, technology, trade secrets, and information disclosed to Element by others under agreements to hold such information confidential.

Id. at 14. Mr. Dorfman also "acknowledge[d] that the past investment performance of, or other information related to an investment made by, [Element or the portfolios managed by Mr. Dorfman] or any other traders for Element, in each case including, but not limited to, track record/return percentage, risk limits or compensation arrangements of Element" or its employees, partners, or members constituted Confidential Information. Id.

As Mr. Dorfman described it, at a high-level ECM investing entails two major components: making investment decisions regarding IPOs, marketed deals, and overnight blocks, and developing relationships with people in positions to provide opportunities to invest in such transactions. Mr. Dorfman joined Element to do the investment decision making part of the ECM work the Element way: adopting a systematic approach based on research and data analytics.

As he stated repeatedly in writing, including in his self-evaluations, Mr. Dorfman embraced the process of systematically optimizing the ECM strategies, working at Element with a team of highly trained, skilled, and experienced systematic investment researchers (primarily Jinwei Wu and Kirill Peretoltchine) and even more experienced and sophisticated systematic investors supervising and guiding him (Mr. Talpins and Jason Stipanov). He worked with this team developing investing methods and tools, including back testing, a hedging optimizer and unwind algorithm, a benchmarking model and analysis, and various trading strategies. While these tools ingested and analyzed public information, they did so using methods that Element regularly updated and refined during Mr. Dorfman's employment, and maintained as confidential.

The team made successful investment decisions and unsuccessful ones. In some years the ECM strategy had annual losses in the tens of millions of dollars, but the team returned to its research-based approach, refined the ECM strategy, and made it profitable enough to more than recoup those losses in other years. Over time it was a very profitable strategy based on which Mr. Dorfman was very highly compensated. Far from being on an island by himself, Mr. Dorfman assessed and benefited from the expertise and confidential systems developed and implemented by the Element team.

As for the other aspect of ECM investing, developing relationships leading to investment opportunities, when he joined Element, Mr. Dorfman had strong relationships at the most significant U.S. financial institutions for engaging in the ECM business. While at Element, with the firm's support, Mr. Dorfman was able to build additional relationships for ECM investing, particularly in Asia and the Middle East. In 2023, Mr. Dorfman traveled to and met with prospective new sources of deal allocations for Element in Hong Kong and also met with potential corporate partners in Japan. In 2024, he traveled to Saudi Arabia and Dubai to develop contacts for Element there.

In February 2024, after losing money in its overall business for several years, Element announced that it would begin to reduce the amount of capital it managed. It redeemed most of its outside investors so that it was primarily investing Mr. Talpins's money. The reduction was

significant, from approximately $17 billion to approximately $3 billion. Mr. Dorfman was uncomfortable with these changes. Still, there was no evidence that he was encouraged to leave, that Element was moving away from ECM investing, or that his compensation was reduced.

Mr. Dorfman notified Mr. Stipanov on February 17, 2025 that he was resigning from Element. He accepted new employment with Squarepoint, a quantitative systematic hedge fund whose general approach to investing is much like Element's. The evidence was that Element will continue to do ECM investing after Mr. Dorfman leaves. Mr. Dorfman has knowledge of the tools Element developed to aid his business. While he did not physically or digitally take those tools from Element, as Mr. Stipanov testified, Mr. Dorfman's knowledge of Element's confidential ECM investing strategies would provide Squarepoint with a "gigantic head start ... to launch … or improve the strategy."

Mr. Dorfman's employment ended on August 17, 2025. The six-month non-compete period began the next day and ends on February 17, 2026. During the non-compete period, Element is paying Mr. Dorfman at the rate of $400,000 per year, his base salary at the time he resigned. When he commences work for Squarepoint, he will receive from Squarepoint a $3 million signing bonus.

3. Legal Conclusions

The governing New York legal framework is well known. Because they are viewed as anti-competitive, non-compete agreements are treated differently from other contracts; they must be evaluated for reasonableness, "balancing the need of fair protection for the benefit of the employer against the opposing interests of the former employee and the public." *BDO Seidman v. Hirshberg*, 93 N.Y. 2d 382, 388 (1999). "A restraint is reasonable only if it: (1) is *no greater* than is required for the protection of the *legitimate interest* of the employer, (2) does not impose undue hardship on the employee, and (3) is not injurious to the public." *BDO Seidman*, 93 N.Y. 2d at 388-389 (emphasis in original).

Here, Mr. Dorfman does not face undue hardship due to the non-compete. His $400,000 base salary is being paid by Element, he will receive a $3 million signing bonus from Squarepoint, and he did not show that his work will be harmed in any significant way by a six-month hiatus. There was also no showing of injury to the public secondary to enforcement of the non-compete. Regarding the scope of the non-compete clause, the six-month duration is reasonable, even when combined with the six-month notice period. *See International Business Machines Corporation v. De Freitas Lima*, 2020 WL 5261336, at *10 (S.D.N.Y. Sept.3, 2020), *aff'd sub nom. Int'l Bus. Machines Corp. v. Lima*, 833 F. App'x 911 (2d Cir. 2021). The lack of a geographic limit is reasonable given Element's international business. *Id.*

The question, then, is whether the interests protected by the non-compete clause are legitimate. Legitimate interests of an employer include those in (1) confidential information and trade secrets, (2) goodwill and business relationships of clients and customers, and (3) unique

employees. *International Business Machines Corporation v. De Freitas Lima*, 2020 WL 5261336, at *7. Here, because Mr. Dorfman is not, under applicable law, a unique employee, *see Purchasing Assocs., Inc. v. Weitz*, 13 N.Y.2d 267, 274 (1963), the focus is on the first two of these interests.

Regarding confidential information and trade secrets, Mr. Dorfman contends he came across nothing confidential in his work for Element. All the analysis he or others performed at Element concerning his ECM business was based on publicly available information, he states, and protecting it is therefore not a legitimate interest sufficient to support a non-compete agreement. Element's only confidential information, he contends, was the identity of its investors, which he never learned.[3]

I disagree. Element has a legitimate interest in protecting, with a reasonable non-compete clause, the confidential information it developed and shared with Mr. Dorfman, including the investment tools, methods, and strategies noted above. While these tools, methods, and strategies may assemble and analyze publicly available information, I am persuaded that the *way* they use the information is confidential and valuable to Element. Whether Mr. Dorfman found the tools and strategies to be effective or not, he participated in their development and use, and he benefitted from that exposure by learning whether and how they do or do not work. Either conclusion relies on confidential information and is valuable to an Element competitor such as Mr. Dorfman's new employer, Squarepoint.

This conclusion is further supported by the detailed, industry-specific definition of Confidential Information in the Employment Agreement. Mr. Dorfman read, understood, took advice on, and then agreed that Element's "investment strategies, its implementation of systematic trading strategies (and the details thereof), its analysis and development of systematic trading strategies and potential systematic trading strategies, its technology or the implementation or exploitation thereof, including without limitation information pertaining to trading strategies and models, software programs, computer algorithms, investment positions, hedging strategies, trade construction" all would be confidential. That contract term makes it difficult now to accept his argument that such information is not legitimately protectable.

Second, while Mr. Dorfman brought a strong reputation and certain business relationships with him to Element, Element shared its business relationships with Mr. Dorfman and helped him develop new relationships, particularly in Asia and the Middle East. Element has a legitimate interest in protecting those prior Element relationships, and the new ones Mr. Dorfman developed while working at Element. Mr. Dorfman spent time in 2023 and 2024 working to build relationships for Element in Asia and the Middle East, including taking trips for Element to

[3] While Mr. Dorfman agreed that protection of Element's confidential information would be "reasonable and necessary" should he leave Element, Employment Agreement at 13, he does not appear to have represented as much, and he did not expressly agree that the non-compete would be necessary, only the Notice Period. I therefore will not rely exclusively on his agreement in the contract to assess whether protection of Element's confidential information is a legitimate interest here.

develop business contacts and prospects there. These relationships are legitimate interests of Element, protectible by Mr. Dorfman's non-compete clause.

4. Conclusion

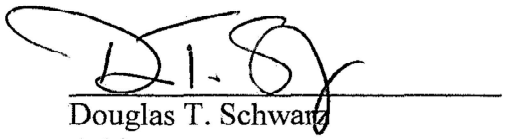
For the reasons set forth above, I conclude that the six-month, paid non-compete agreement between Mr. Dorfman and Element is reasonable and enforceable, and I deny the declaratory relief requested by Mr. Dorfman.

The administrative fees of the American Arbitration Association totaling $8,950.00, and the compensation of the arbitrator totaling $37,350.00, shall be borne as incurred.

This Award is in full settlement of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby, denied.

I, Douglas T. Schwarz, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument which is my Award.

November 4, 2025



Douglas T. Schwarz
Arbitrator