

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Laurie E. Diamond

Case Number: 17-03013

vs.

Respondents
Morgan Stanley
Wells Fargo Advisors, LLC
Jeffrey Allan Van Demark

Hearing Site: New York, New York

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: Customer vs. Members and Associated Person

This case was decided by a majority-public panel.

The evidentiary hearing was conducted partially by videoconference.

REPRESENTATION OF PARTIES

For Claimant Laurie E. Diamond: David Graff, Esq. Graff Silverstein LLP, Hartsdale, NY*.

For Respondent Morgan Stanley: Irisa Chen, Esq., Morgan Stanley, New York, New York.

For Respondent Wells Fargo Advisors, LLC (“Wells Fargo”): Patricia E. Cowart, Esq., Wells Fargo Law Department, Fort Lauderdale, Florida.

For Respondent Jeffrey Allan Van Demark (“Van Demark”): Andrew R. Park, Esq., Park Sensenig Attorneys, Richmond, Virginia.

*FINRA recorded the appearance of Claimant’s counsel at the time of filing of the Statement of Claim. Counsel’s representation of Claimant may have ended with the parties’ settlement. Please see the Other Issues Considered and Decided section of this Award for information on whether Claimant’s counsel appeared at the expungement hearing.

CASE INFORMATION

Statement of Claim filed on or about: November 8, 2017.

Laurie E. Diamond signed the Submission Agreement: November 7, 2017.

Statement of Answer filed by Respondent Morgan Stanley on or about: February 26, 2018.
Morgan Stanley signed the Submission Agreement: February 15, 2018.

Statement of Answer filed by Respondent Wells Fargo on or about: March 14, 2018.
Wells Fargo Advisors, LLC signed the Submission Agreement: March 7, 2018.

Statement of Answer filed by Respondent Van Demark on or about: February 16, 2018.
Jeffrey Allan Van Demark signed the Submission Agreement: February 8, 2018.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: failure to know the customer and unsuitable trading (FINRA Rule 2090); failure to supervise; violation of NASD Conduct Rule 2510 related to unauthorized use of discretion & trading in options; and unauthorized trading in options. The causes of action relate to various securities.

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

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

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

RELIEF REQUESTED

In the Statement of Claim, Claimant requested compensatory damages for trading losses in the amount of \$396,000.00; punitive damages in the amount of \$1,188,000.00; disgorgement and return of commissions investment advisory fees and other fees and costs associated with the trading activity in Claimant accounts; statutory interest; costs; attorney and expert witness fees; and such other relief as deemed equitable and just.

In the Statement of Answer, Respondent Morgan Stanley requested that the Panel dismiss Claimant's claim in its entirety.

In the Statement of Answer, Respondent Wells Fargo requested an award dismissing Claimant's claim in its entirety.

In the Statement of Answer, Respondent Van Demark requested that the Panel deny and dismiss Claimant's claims with prejudice; expungement of all references to Claimant's prior complaint and this arbitration; and award any other relief as is just.

OTHER ISSUES CONSIDERED AND DECIDED

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

On February 13, 2020, Claimant filed a notice of settlement. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

On March 9, 2020, Respondent Van Demark filed a Renewed Motion for Expungement. On March 26, 2020 Claimant filed an Opposition to Respondent Van Demark's Renewed Motion for Expungement.

The Panel conducted a recorded, in-person hearing on October 12, 2021, so the parties could present oral argument and evidence on Jeffrey Van Demark's request for expungement.

Claimant Laurie Diamond participated in the expungement hearing by videoconference and opposed the request for expungement.

The Panel reviewed Jeffrey Van Demark BrokerCheck® Report. The Panel noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrence in the CRD.

The Panel also reviewed the settlement documentations, considered the amount of payment made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Panel noted that the settlement was not conditioned on any party to the settlement not opposing the request for expungement and that Jeffrey Allan Van Demark did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: the pleadings; Respondent Van Demark's testimony; Claimant Laurie Diamond's testimony; Respondent Van Demark's BrokerCheck® Report; settlement agreements; and the exhibits.

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

AWARD

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

1. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 1863136) from registration records maintained by the CRD for Respondent Jeffrey Allan Van Demark (CRD Number 1240300) with the understanding that, pursuant to Notice to Members 04-16, Respondent Jeffrey Allan Van Demark must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 12805 of the Code of Arbitration Procedure ("Code"), the Panel has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is false.

The Panel has made the above Rule 2080 finding based on the following reasons:

Respondent Van Demark warned Claimant about giving away huge sums from her account but she continued to do so while forbidding Van Demark to sell her favorite stock, Interoil Corp., in which she had invested heavily. She then blamed Van Demark for the resulting concentration of her account in that badly performing stock and accused him of inappropriate investments.

When Van Demark left Morgan Stanley for Wells Fargo in 2014, Claimant followed him.

Claimant accused Van Demark of “selling away” when she opened an E*Trade account with the help of her insurance broker, then accused Van Demark of promoting a penny stock she wanted to buy. Van Demark had told her that he did not sell penny stocks to his clients, and he thought her purchase a bad idea. When Van Demark refused to buy penny stocks she wanted, she told him to transfer \$50,000 from her account to her E*Trade account and did it herself.

Claimant never filed a complaint against Van Demark at Morgan Stanley or at Wells Fargo.

When Claimant decided to move her accounts from Wells Fargo to RBC Wealth Management and combine her accounts with those of her son, she sent Van Demark an email dated June 24, 2015 thanking him and saying she always appreciated everything he did for her. She further stated that she hoped she would be able to return to him if “this was a wrong direction to take”.

2. Any and all claims for relief not specifically addressed herein, including any requests for attorneys’ fees, are denied.

FEES

Pursuant to the Code of Arbitration Procedure (“Code”), the following fees are assessed:

Filing Fees

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

Initial Claim Filing Fee =\$ 2,000.00

**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 firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as parties Respondent Morgan Stanley and Wells Fargo Advisors, LLC are each assessed the following:

Member Surcharge = \$ 3,025.00
Member Process Fee = \$ 6,175.00

Discovery-Related Motion Fees

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

One (1) decision on a discovery-related motion on the papers with one (1) Arbitrator @ \$200.00/decision = \$ 200.00

Respondent Van Demark submitted one (1) discovery-related motion

Total Discovery-Related Motion Fees = \$ 200.00

The Panel has assessed the total 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:

Four (4) pre-hearing sessions with the Panel @ \$1,400.00/session = \$ 5,600.00
Pre-Hearing Conferences: May 10, 2018 1 session
April 14, 2020 1 session
October 21, 2020 1 session
June 29, 2021 1 session

Two (2) hearing sessions on expungement request @ \$1400.00/session = \$ 2,800.00
Hearings: October 12, 2021 2 sessions

Total Hearing Session Fees = \$ 8,400.00

The Panel has assessed \$700.00 of the hearing session fees to Claimant.

The Panel has assessed \$700.00 of the hearing session fees jointly and severally to Respondents.

The Panel has assessed \$7,000.00 of the hearing session fees to Respondent Van Demark, which includes the fees for the expungement hearing sessions.

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

ARBITRATION PANEL

Pamela H Roderick	-	Public Arbitrator, Presiding Chairperson
Camille S. Cooper	-	Public Arbitrator
Michael S. Perinelli	-	Non-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

Pamela H Roderick

Pamela H Roderick
Public Arbitrator, Presiding Chairperson

11/08/2021

Signature Date

Camille S. Cooper

Camille S. Cooper
Public Arbitrator

10/25/2021

Signature Date

Michael S. Perinelli

Michael S. Perinelli
Non-Public Arbitrator

10/28/2021

Signature Date

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November 09, 2021

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