

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Delia Hauser
Hauser Non-Exempt Marital Trust DTD 12/20/96

Case Number: 17-03112

vs.

Respondent

Morgan Stanley

Hearing Site: Los Angeles, California

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: Customers vs. Member

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

Claimants Delia Hauser and Hauser Non-Exempt Marital Trust DTD 12/20/96 (collectively “Claimants”) appeared pro se.*

For Respondent Morgan Stanley: Joseph Coates, Esq., Greenberg Traurig, P.A., West Palm Beach, Florida.

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

CASE INFORMATION

Statement of Claim filed on or about: November 17, 2017.

Claimants signed the Submission Agreement: November 16, 2017.

Statement of Answer filed on or about: January 26, 2018.

Respondent signed the Submission Agreement: January 29, 2018.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: breach of fiduciary duty; constructive fraud; common law fraud; fraud by material misrepresentations/omissions; breach of contract; failure to supervise and control; and violations of state and federal securities laws and FINRA/SEC rules. The causes of action relate to Claimants' investment assets, including Portfolio Loan Accounts.

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

RELIEF REQUESTED

In the Statement of Claim, Claimants requested:

1. General and compensatory damages according to proof, but not less than \$1,000,000.00;
2. Lost opportunity cost in an amount according to proof;
3. Rescission of all unsuitable investments Respondent recommended;
4. Disgorgement of all commissions and fees paid to Respondent for the life of Claimants' accounts;
5. Costs of proceedings;
6. Punitive damages in an amount according to proof and deter Respondent from engaging in similar misconduct in the future;
7. Interest at the legal rate on all sums recovered;
8. Attorneys' fees and costs; and
9. Such other and further relief the Panel deems just and appropriate.

In the Statement of Answer, Respondent requested:

1. Claimants' claims be dismissed in their entirety;
2. Costs;
3. Such other relief the Panel deems just and appropriate; and
4. Expungement of this claim from Unnamed Party George Joseph Strnad II's Central Registration Depository ("CRD") records.

Respondent filed a request for expungement on behalf of Unnamed Party George Joseph Strnad II of all references to this matter from CRD registration records. Please see the Other Issues Considered and Decided section of this Award for more information.

OTHER ISSUES CONSIDERED AND DECIDED

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

On December 26, 2019, Claimants filed a notice of voluntary dismissal with prejudice. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

On January 13, 2020, Respondent filed a Motion for Expungement on behalf of Unnamed Party George Joseph Strnad II, to which no response was filed.

The Panel conducted a recorded, in-person hearing on September 21, 2021, so the parties could present oral argument and evidence on Unnamed Party George Joseph Strnad II's request for expungement.

Claimants did not participate in the expungement hearing.

The Panel reviewed Unnamed Party George Joseph Strnad II's 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 documentation, 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 Unnamed Party George Joseph Strnad II did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: pleadings; exhibits; and the settlement agreement between Claimants and Respondent.

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. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 1962380) from registration records maintained by the CRD for Unnamed Party George Joseph Strnad II (CRD Number 1635225) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party George Joseph Strnad II 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 factually impossible or clearly erroneous.

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

The Panel finds that the claim and the allegations therein are clearly erroneous. Therefore, expungement of the claim against Unnamed Party George Joseph Strnad II ("Strnad") is warranted.

Claimant Delia Hauser was a widow, and an experienced and successful businesswoman in the nightclub business. After she was suddenly widowed, she and Mr. Strnad made a plan for her accounts, which consisted of several million dollars. They agreed that she would withdraw \$150,000-\$180,000 per year for various expenses of living. In addition to Mr. Strnad, Claimant Delia Hauser had the services of a CPA at her disposal, to advise her on finances.

In a short time, Claimant Delia Hauser requested a way to borrow against her assets. She did not want to sell assets, because, she explained, she did not want to pay capital gains on her withdrawals. In response to Claimant Delia Hauser's requests for a loan against her assets, Mr. Strnad suggested, and Claimant Delia Hauser agreed to, Portfolio Loan Accounts as a vehicle to obtain the money she wanted. After a relatively short time, Claimant Delia Hauser began seriously exceeding the planned amount of withdrawals.

Mr. Strnad tried to contact her, meet with her, and sent her warnings by email that her money would not last more than several years at the rate she was withdrawing it. Claimant Delia Hauser was unresponsive to the warnings.

Ultimately, Claimant Delia Hauser filed her FINRA claim.

Claimant Delia Hauser moved her accounts to Charles Schwab & Company, Inc. ("Schwab"). Records obtained from Schwab demonstrate that despite her claim against Respondent for the use of Portfolio Loan Accounts, Claimant Delia Hauser used the same type of account with her assets at Schwab. In addition, when Claimant Delia Hauser withdrew her assets from Respondent, she had made a considerable profit over the period her assets were at Respondent.

None of the pertinent allegations in the Statement of Claim were supported by the evidence presented.

2. Any and all claims for relief not specifically addressed herein 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:

Initial Claim Filing Fee	= \$ 1,725.00
--------------------------	---------------

**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	= \$	2,475.00
Member Process Fee	= \$	5,075.00

Postponement Fees

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

March 12-15, 2019, postponement requested by Parties	= \$	1,300.00
October 20, 2020, postponement requested by Parties	= \$	1,300.00
September 22-23, 2021, postpone requested by Respondent	= \$	1,300.00
Total Postponement Fees	= \$	3,900.00

The Panel has waived the total postponement fees.

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 submitted one (1) discovery-related motion

Total Discovery-Related Motion Fees	= \$	200.00
--	-------------	---------------

The Panel has assessed the total discovery-related motion fees to Respondent.

Contested Motion for Issuance of Subpoena Fees

Fees apply for each decision on a contested motion for the issuance of a subpoena.

One (1) decision on a contested motion for the issuance of a subpoena with the Panel @ \$750.00.	= \$	750.00
--	------	--------

Total Contested Motion for Issuance of Subpoena Fees	= \$	750.00
---	-------------	---------------

The Panel has assessed the total contested motion for issuance of subpoena fees to Claimant.

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 conference with the Arbitrator(s), which lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) pre-hearing sessions with the Panel @ \$1,300.00/session	= \$	3,900.00
Pre-Hearing Conferences: March 5, 2018	1 session	
October 16, 2020	1 session	
May 5, 2021	1 session	

One (1) hearing session on expungement request @ \$1,300.00/session	= \$	1,300.00
Hearing: September 21, 2021	1 session	

Total Hearing Session Fees	= \$	5,200.00
-----------------------------------	-------------	-----------------

The Panel has assessed \$650.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$4,550.00 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Sandra L. Malek	-	Public Arbitrator, Presiding Chairperson
Constance Ellen Boukidis	-	Public Arbitrator
Raelynn Napper	-	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

Sandra L. Malek

Sandra L. Malek
Public Arbitrator, Presiding Chairperson

10/04/2021

Signature Date

Constance Ellen Boukidis

Constance Ellen Boukidis
Public Arbitrator

10/03/2021

Signature Date

Raelynn Napper

Raelynn Napper
Public Arbitrator

10/01/2021

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.

October 06, 2021

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