

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Jay R. Fagan
Sandra N. Fagan

Case Number: 18-03696

vs.

Respondent

Morgan Stanley

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: Customers vs. Member

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimants Jay R. Fagan and Sandra N. Fagan: Richard D. De Vita, Esq., De Vita & Associates, Hoboken, New Jersey*.

For Respondent Morgan Stanley: Adam M. Kauff, Esq., Kauff Laton Miller LLP, New York, New York.

*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 Claimant's counsel appeared at the expungement hearing.

CASE INFORMATION

Statement of Claim filed on or about: October 24, 2018.

Sandra N. Fagan signed the Submission Agreement: October 24, 2018.

Jay R. Fagan signed the Submission Agreement: October 24, 2018.

Statement of Answer filed by Respondent on or about: December 19, 2018.

Morgan Stanley signed the Submission Agreement: December 19, 2018.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: unsuitable investments and investment strategy; duty to provide information; failure to supervise; vicarious liability; breach of contract; violation of securities regulatory rules; common law claims; and violation of New York Business Deceptive Acts Law. The causes of action relate to various equities.

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 all losses in the investments at issue; all charges to the Claimants' accounts and commissions paid to Respondent; the lost earnings that the accounts would have earned if Claimants' money had been properly invested; rescission; the interest that Respondent promised Claimants on the investments at issue; pre-judgment interest at the maximum statutory rate on all losses sustained from the sale of the transactions until the date of the award; the full monetary benefit of any bargain that was entered into by the Claimants and Respondent; punitive damages; all costs of these proceedings, including forum fees, hearing session fees, and reasonable attorneys' fees under statutory law and common law as well as under the FINRA Rules of Fair Practice; and post-judgment interest at the maximum statutory interest rate.

In the Statement of Answer, Respondent requested that the Panel dismiss Claimants' claim in its entirety and costs.

OTHER ISSUES CONSIDERED AND DECIDED

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

On August 24, 2021, Claimants 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 August 25, 2021, Respondent filed a Motion for Expungement on behalf of Unnamed Party William D. Ard, to which no response was filed.

The Panel conducted a recorded, in-person hearing on August 30, 2021, so the parties could present oral argument and evidence on Respondent's request for expungement on behalf of Unnamed Party William D. Ard.

Claimants (and counsel) did not participate in the expungement hearing and did not oppose the request for expungement.

The Panel reviewed William D. Ard'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 William D. Ard did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: pleadings, exhibits, testimony of William D. Ard, William D. Ard's BrokerCheck® Report, and the settlement agreement.

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 2004670) from registration records maintained by the CRD for Unnamed Party William D. Ard (CRD Number 1133673) with the understanding that, pursuant to Notice to Members 04-16, William D. Ard 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:

The evidence showed that there was no substantial factual basis for the claim. All investment decisions were made by the Claimants. Mr. Ard recommended the Claimants diversify their account but they declined.

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 =\$ 1,575.00

**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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent Morgan Stanley is assessed the following:

Member Surcharge	= \$ 1,900.00
Member Process Fee	= \$ 3,750.00

Postponement Fees

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

January 21-24, 2020, postponement requested by Claimants	= \$ 1,125.00
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Total Postponement Fees	= \$ 1,125.00

The Panel has assessed the total postponement fees jointly and severally to Claimants.

Last-Minute Cancellation Fees

Fees apply when a hearing on the merits is cancelled within ten calendar days before the start of a scheduled hearing session:

January 21-24, 2020, cancellation requested by Claimants	= \$ 1,800.00
August 30-31, September 1-2, 2021, settled by parties	= \$ 1,800.00
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Total Last-Minute Cancellation Fees	= \$ 3,600.00

The Panel has assessed \$2,700.00 of the late cancellation fees jointly and severally to Claimants.

The Panel has assessed \$900.00 of the late cancellation fees to Respondent.

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
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Respondent submitted one (1) discovery-related motion

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Total Discovery-Related Motion Fees	= \$ 200.00

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

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 @ \$1,125.00/session	= \$	4,500.00
Pre-Hearing Conferences: February 21, 2019	1 session	
January 21, 2020	1 session	
April 20, 2020	1 session	
February 1, 2021	1 session	
One (1) hearing session on expungement request @ \$1,125.00/session	= \$	1,125.00
Hearing: August 30, 2021	1 session	
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Total Hearing Session Fees	= \$	5,625.00

The Panel has assessed \$2,250.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$3,375.00 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Francis Carling	-	Public Arbitrator, Presiding Chairperson
Howard J. Stiefel	-	Public Arbitrator
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

Francis Carling

Francis Carling
Public Arbitrator, Presiding Chairperson

09/17/2021

Signature Date

Howard J. Stiefel

Howard J. Stiefel
Public Arbitrator

09/17/2021

Signature Date

Richard Lee Mansdoerfer, Jr.

Richard Lee Mansdoerfer, Jr.
Public Arbitrator

09/17/2021

Signature Date

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September 20, 2021

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