

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Robert Patrick McCabe, Jr.

Case Number: 18-03815

vs.

Respondent

Morgan Stanley

Hearing Site: Boca Raton, Florida

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: Associated Person vs. Member

This case was decided by a majority-public panel.

The evidentiary hearings were conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Robert Patrick McCabe: Jonathan Brennan Butler, Esq., Ciklin Lubitz, West Palm Beach, Florida.

For Respondent Morgan Stanley: Tracy L. Gerber, Esq. and Beth A. Black, Esq., Greenberg, Traurig, West Palm Beach, Florida.

CASE INFORMATION

Statement of Claim filed on or about: November 2, 2018.

Robert Patrick McCabe signed the Submission Agreement: November 2, 2018.

Statement of Answer filed by Respondent on or about: January 29, 2019.

Morgan Stanley signed the Submission Agreement: December 11, 2018.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: wrongful termination; negligence; violation of FINRA Rule 2010; defamation; intentional interference with advantageous business relationships; breach of contract; breach of implied covenant of good faith and fair dealing; unjust enrichment; quantum meruit; violation of ERISA, 29 U.S.C. Section 1001, et. seq.; and violation of Fair Labor Standards Act, 29 U.S.C. Sections 206-207 and 29

C.F.R. Section 541.602. The causes of action relate to, among other things, Claimant's termination of employment with Respondent, and Respondent's cancellation and misappropriation of compensation and retirement benefits allegedly due Claimant.

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, Claimant requested: compensatory damages of no less than \$5,000,000.00; punitive damages in the amount of \$15,000,000.00; attorneys' fees; interest; costs, including filing and forum fees; declaratory relief as to Claimant's right to receive cancelled, deferred and unpaid compensation; expungement and reformation of Claimant's Form U5 maintained by the Central Registration Depository ("CRD") to provide for a voluntary termination or termination without cause; and such further and additional legal or equitable relief deemed just and necessary by the Panel.

In the Statement of Answer, Respondent requested that Claimant's claims be dismissed in their entirety.

At the hearing, Claimant modified his relief requests as follows: \$330,367.00 for cancelled deferred compensation; \$2,000,000.00 for lost earnings and lost earnings capacity; \$1,000,000.00 for reputational damages arising from Respondent's defamatory Form U5; \$1,000,000.00 in punitive and exemplary damages; interest at the rate of 5% per annum on all compensatory damages accruing from the date of Award service through satisfaction of the Award; assessment of all forum, filing and arbitrator fees against Respondent; expungement/modification to Claimant's Form U5; and any further monetary or equitable relief to which Claimant is entitled.

OTHER ISSUES CONSIDERED AND DECIDED

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

During the first set of evidentiary hearings conducted in this matter, Respondent moved to preclude certain emails submitted by Claimant, to which Claimant objected. After hearing oral argument from the parties, the Panel denied Respondent's motion.

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. Claimant's claims are denied in their entirety.
2. Claimant's request for expungement is denied.

- 3. Other than forum fees which are assessed hereinbelow, the parties shall each bear their own costs and expenses incurred in this matter.
- 4. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages and 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 = \$ 2,250.00

**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 = \$ 4,025.00
Member Process Fee = \$ 7,000.00

Postponement Fees

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

March 30-April 3 and April 21-23, 2020, postponement requested by Respondent WAIVED

Total Postponement Fees WAIVED

The Panel has waived the total postponement fees.

Discovery-Related Motion Fees

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

Six (6) decisions on discovery-related motions on the papers = \$ 1,200.00
with one (1) Arbitrator @ \$200.00/decision

Claimant submitted one (1) discovery-related motion
Respondent submitted five (5) discovery-related motions

Total Discovery-Related Motion Fees = \$ 1,200.00

The Panel has assessed \$600.00 of the discovery-related motion fees to Claimant.

The Panel has assessed \$600.00 of the 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 Arbitrator(s), including a pre-hearing conference with the Arbitrator(s), which lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session with a single Arbitrator @ \$450.00/session	= \$	450.00
Pre-Hearing Conference: February 3, 2020	1 session	
Nine (9) pre-hearing sessions with the Panel @ \$1,500.00/session	= \$	13,500.00
Pre-Hearing Conferences: March 20, 2019	1 session	
January 27, 2020	1 session	
March 6, 2020	1 session	
April 9, 2020	1 session	
August 10, 2020	1 session	
February 25, 2021	1 session	
April 20, 2021	1 session	
May 13, 2021	1 session	
August 25, 2021	1 session	
Twenty (20) hearing sessions @ \$1,500.00/session	= \$	30,000.00
Hearings: May 17, 2021	2 sessions	
May 18, 2021	2 sessions	
May 19, 2021	2 sessions	
May 21, 2021	2 sessions	
June 8, 2021	2 sessions	
June 9, 2021	2 sessions	
June 10, 2021	2 sessions	
June 11, 2021	2 sessions	
September 2, 2021	2 sessions	
September 3, 2021	2 sessions	

Total Hearing Session Fees	= \$	43,950.00
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The Panel has assessed \$21,975.00 of the hearing session fees to Claimant.

The Panel has assessed \$21,975.00 session fees to Respondent.

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

ARBITRATION PANEL

Herbert Branitsky	-	Public Arbitrator, Presiding Chairperson
Ellen J. Abrams	-	Public Arbitrator
Laura Jeanette Bornheimer	-	Non-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

Herbert Branitsky

Herbert Branitsky
Public Arbitrator, Presiding Chairperson

09/13/2021

Signature Date

Ellen J. Abrams

Ellen J. Abrams
Public Arbitrator

09/13/2021

Signature Date

Laura Jeanette Bornheimer

Laura Jeanette Bornheimer
Non-Public Arbitrator

09/14/2021

Signature Date

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September 14, 2021

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