

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

The JW Alati Group, a Joint Producer Partnership of Robert Alati, Raymond Biswanger, Jason M. Geisz, and Elizabeth Silver

Case Number: 19-00017

vs.

Respondent

Morgan Stanley Smith Barney, LLC

Hearing Site: Detroit, Michigan

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 Persons vs. Member

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimants The JW Alati Group, a Joint Producer Partnership of Robert Alati, Raymond Biswanger, Jason M. Geisz, and Elizabeth Silver (collectively, “Claimants”): David M. Foster, Esq., David M. Foster, P.C., Farmington Hills, Michigan.

For Respondent Morgan Stanley Smith Barney LLC (“Respondent”): Miles D. Hart, Esq. and Johnathan M. Sterling, Esq., Saretsky Hart Michaels + Gould PC, Birmingham, Michigan.

CASE INFORMATION

Statement of Claim filed on or about: January 2, 2019.
Claimants signed the Submission Agreements: December 17, 2018.

Statement of Answer filed on or about: March 14, 2019.
Respondent signed the Submission Agreement: March 19, 2019.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: unenforceable agreement, breach of duty of good faith and fair dealing, breach of contract, and violation of FINRA Rule 2010 – failure to abide by FINRA standards of commercial honor and principles of trade. Claimants’ alleged that financial advisor W.B., formerly part of The JW Alati Group, was

not considered an active advisor or joint producer after going on long-term disability leave and subsequently retiring. Claimants' further alleged that, upon W.B.'s retirement, Respondent unilaterally decided to deduct gross revenues from The JW Alati Group to pay W.B.'s retirement compensation, even though he was ineligible under the Joint Production Memorandum Agreement ("Agreement"), Morgan Stanley Wealth Management Joint Production Arrangement Policy, and Morgan Stanley's Former Advisor Program.

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 approximately \$600,000.00 in compensatory damages, plus interest, costs, and attorneys' fees.

In the Statement of Answer, Respondent requested that the Statement of Claim be denied in its entirety and that it be awarded its costs, expenses, and attorneys' fees.

At the hearing, Claimants requested \$257,000.00 in compensatory damages and requested that the Panel declare any further compensation payable to W.B under the Agreement be rescinded and voided.

OTHER ISSUES CONSIDERED AND DECIDED

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

On October 29, 2020, Claimants filed a Motion to have Respondent Place Monies Improperly Deducted from its Net Commissions Into an Interest-Bearing Escrow Account Until Further Order of the Panel ("Claimants' Motion"). On November 9, 2020, Respondent filed an Opposition to Claimants' Motion and a Motion for Sanctions. On November 12, 2020, Claimants filed a Reply in Support of Claimants' Motion. On January 7, 2021, the Panel heard oral arguments on Claimants' Motion. In an Order dated the same day, the Panel denied Claimants' Motion but did not rule on Respondent's Motion for Sanctions. The Panel denies Respondent's Motion for Sanctions herein.

Arbitrator Timothy Guerriero was properly classified as public at the time of appointment to the Panel in this matter. In the interim, Arbitrator Guerriero's arbitrator classification changed to non-public.

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. Claimants' claims are denied in their entirety.

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

FEES

Pursuant to the Code of Arbitration Procedure, 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

Late Pre-Hearing Cancellation Fees

Fees apply when a pre-hearing conference is cancelled within three business days of the scheduled conference:

December 9, 2019, cancellation requested by parties = \$ 100.00

Total Late Pre-Hearing Cancellation Fees = \$ 100.00

The Panel has assessed \$50.00 of the late pre-hearing cancellation fees jointly and severally to Claimants.

The Panel has assessed \$50.00 of the late pre-hearing cancellation fees to Respondent.

Postponement Fees

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

January 5-7, 2021, postponement requested by parties = \$ 1,300.00

Total Postponement Fees = \$ 1,300.00

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

The Panel has assessed \$650.00 of the postponement 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:

Six (6) pre-hearing sessions with the Panel @ \$1,300.00/session		= \$	7,800.00
Pre-Hearing Conferences:			
April 17, 2019	1 session		
February 18, 2020	1 session		
May 11, 2020	1 session		
October 2, 2020	1 session		
January 7, 2021	1 session		
June 2, 2021	1 session		
Nine (9) hearing sessions @ \$1,300.00/session		= \$	11,700.00
Hearings:			
June 28, 2021	2 sessions		
June 30, 2021	1 session		
July 19, 2021	2 sessions		
July 20, 2021	2 sessions		
August 9, 2021	2 sessions		
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Total Hearing Session Fees		= \$	19,500.00

The Panel has assessed \$9,750.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$9,750.00 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Patrick R. Sughroue	-	Public Arbitrator, Presiding Chairperson
Wayne Carl Hallquist	-	Non-Public Arbitrator
Timothy Guerriero	-	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

Patrick R. Sughroue

Patrick R. Sughroue
Public Arbitrator, Presiding Chairperson

08/18/2021

Signature Date

Wayne Carl Hallquist

Wayne Carl Hallquist
Non-Public Arbitrator

08/17/2021

Signature Date

Timothy Guerriero

Timothy Guerriero
Non-Public Arbitrator

08/17/2021

Signature Date

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August 18, 2021

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