

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimants

Anita Karsch  
Estate of Alvin Ralph Karsch

Case Number: 19-00628

vs.

Respondents

Morgan Stanley  
Roxann Geraldine Romano

Hearing Site: New York, New York

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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 and Associated Person

This case was decided by a majority-public panel.

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimants Anita Karsch and Estate of Alvin Ralph Karsch: John E. Lawlor, Esq., Mineola, New York.

For Respondents Morgan Stanley, and Roxann Geraldine Romano: Joseph A. Sack, Esq. and Jeremy S. Winer, Esq., Morgan Stanley, 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 Claimants' counsel appeared at the expungement hearing.

**CASE INFORMATION**

Statement of Claim filed on or about: March 1, 2019.

Anita Karsch signed the Submission Agreement: March 1, 2019.

Estate of Alvin Ralph Karsch signed the Submission Agreement: March 1, 2019.

Statement of Answer filed by Respondents on or about: June 14, 2019.

Morgan Stanley signed the Submission Agreement: June 12, 2019.

Roxann Geraldine Romano signed the Submission Agreement: June 13, 2019.

### **CASE SUMMARY**

In the Statement of Claim, Claimants asserted the following causes of action: unsuitability; misrepresentation/non-disclosures; negligent misrepresentations; omissions; failure to disclose; failure to supervise; breach of implied and express contracts; common law fraud; negligence; breach of fiduciary duty; elder abuse; violation of Section 10(b) of the Exchange Act, 15 U.S.C. 78(b) and Rule 10b-5 promulgated thereunder; respondeat superior; and violation of FINRA Rule 2010. The causes of action relate to variable annuity contracts.

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

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested compensatory and/or recessionary and other damages in an amount to be proved but not less than actual losses of \$1,755,896.00; accrued interest; punitive damages; attorneys' fees; costs, expert and witness fees, and administrative expenses; and such other further and different relief the Panel finds just and equitable.

In the Statement of Answer, Respondents requested that the Panel dismiss the Claim in its entirety with prejudice, recommend that any reference to this matter be expunged from Roxann Geraldine Romano's CRD record, and order that Claimants be required to cover the costs and fees associated with this proceeding.

### **OTHER ISSUES CONSIDERED AND DECIDED**

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

On September 21, 2021, Claimants filed a notice of settlement. Respondents requested that the matter remain open for the purposes of an expungement hearing. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

On September 27, 2021, Respondent Roxann Geraldine Romano filed a Motion for Expungement, to which no response was filed.

The Panel conducted a recorded hearing by videoconference on October 5, 2021, so the parties could present oral argument and evidence on Roxann Geraldine Romano's request for expungement.

Claimants and counsel did not participate in the expungement hearing.

The Panel reviewed Roxann Geraldine Romano'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 Roxann Geraldine Romano did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: the pleadings; Respondent Roxann Geraldine Romano's testimony; Respondent Roxann Geraldine Romano's BrokerCheck® Report; 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 hearing, 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 2021428) from registration records maintained by the CRD for Respondent Roxann Geraldine Romano (CRD Number 1856485) with the understanding that, pursuant to Notice to Members 04-16, Respondent Roxann Geraldine Romano 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 findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; and the claim, allegation, or information is false.

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

The underlying claim of unsuitability was clearly erroneous and/or false within the meaning of FINRA Rule 2080(A) and (C) in that the complained-of tax consequences of the annuity sales at issue were inevitable, unavoidable, discussed, and agreed to by the selling customer and his accountant; and, moreover, there was no harm or injury to the customer.

Any and all claims for relief not specifically addressed herein 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 firm that employed the associated person at the time of the event giving rise to the dispute. Accordingly, as a party, Respondent Morgan Stanley is assessed the following:

Member Surcharge = \$ 3,025.00

Member Process Fee = \$ 6,175.00

### **Postponement Fees**

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

January 13-17, 2020, postponement requested by Parties = \$ 1,400.00

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Total Postponement Fees = \$ 1,400.00

The Panel has assessed \$700.00 of the postponement fees jointly and severally to Claimants.

The Panel has assessed \$700.00 of the postponement 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:

One (1) pre-hearing session with a single Arbitrator @ \$450.00/session = \$ 450.00  
Pre-Hearing Conference: January 16, 2020 1 session

Three (3) pre-hearing sessions with the Panel @ \$1,400.00/session = \$ 4,200.00  
Pre-Hearing Conferences: July 8, 2019 1 session  
April 28, 2020 1 session  
January 4, 2021 1 session

One (1) hearing session on expungement request @ \$1,400.00/session = \$ 1,400.00  
Hearing: October 5, 2021 1 session

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Total Hearing Session Fees = \$ 6,050.00

The Panel has assessed \$2,325.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$2,325.00 of the hearing session fees jointly and severally to Respondents.

The Panel has assessed the \$1,400.00 hearing session fees for the October 5, 2021 expungement hearing to Respondent Roxann Geraldine Romano.

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

**ARBITRATION PANEL**

Brian John Gallagher	-	Public Arbitrator, Presiding Chairperson
Michael Jaffe	-	Public Arbitrator
Richard A. Cini	-	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**

***Brian John Gallagher***

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Brian John Gallagher  
Public Arbitrator, Presiding Chairperson

**10/12/2021**

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Signature Date

***Michael Jaffe***

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Michael Jaffe  
Public Arbitrator

**10/13/2021**

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Signature Date

***Richard A. Cini***

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Richard A. Cini  
Non-Public Arbitrator

**10/08/2021**

\_\_\_\_\_  
Signature Date

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October 13, 2021

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