

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants
Stephen Papetti
Alfred Papetti

Case Number: 19-01094

vs.

Respondent
Morgan Stanley & Co., LLC

Hearing Site: Jersey City, New Jersey

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 a majority-public panel.

REPRESENTATION OF PARTIES

For Claimants Stephen Papetti (“Steve”), and Alfred Papetti (“Al”): Max Folkenflik, Esq., Folkenflik & McGerity LLP, New York, New York*.

For Respondent Morgan Stanley & Co., LLC: William D. Briendel, Esq. and Joseph A. Sack, Esq., Greenberg Traurig, LLP, White Plains, New York.

For Unnamed Party Ira Allen Walker: David E. Robbins, Esq., Kaufman Gildin & Robbins, 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 Claimants’ counsel appeared at the expungement hearing.

CASE INFORMATION

Amended Statement of Claim filed on or about: April 26, 2019.
Stephen Papetti signed the Submission Agreement: April 22, 2019.
Alfred Papetti signed the Submission Agreement: April 22, 2019.

Statement of Answer filed by Respondent on or about: June 20, 2019.
Morgan Stanley & Co., LLC signed the Submission Agreement: June 18, 2019.

CASE SUMMARY

In the Amended Statement of Claim, Claimants asserted the following causes of action: breach of contract; breach of fiduciary duty; fraudulent omissions; negligent misrepresentation; deceptive business practices (N.Y. G.B.L. § 349); securities fraud; fraudulent scheme under Section 17(a)(1) of the Securities Act of 1933, and Rules 10b-5(a) and 10b-5(c) promulgated under the Securities Exchange Act of 1934; grossly negligent failure to supervise; and respondeat superior.

The causes of action relate to inappropriate allocation of trades between “wrap” accounts regarding unspecified securities.

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

RELIEF REQUESTED

In the Amended Statement of Claim, Claimants requested judgement on the first, second, fourth, fifth, seventh and eighth claims for relief, in an amount no less than \$486,322.70 for AI, and \$474,959.58 for Steve, for a total of \$961,282.28; on the third claim for relief, in addition to the amount of actual damages suffered, the amount of additional compensation to be forfeited by Respondent will be determined at the hearing, but no less than \$1,500,000.00 for Steve and \$1,500,000.00 for AI; on the seventh claim for relief, the actual damages the Claimants suffered will be determined at the hearing, but no less than \$1,500,000.00 for Steve and \$1,500,000.00 for AI, prior to trembling, or no less than \$4,000,000.00 for Steve and \$4,000,000.00 for AI, plus reasonable attorneys’ fees; on the ninth and tenth claims for relief, for an amount no less than \$4,000,000.00 for Steve and \$4,000,000.00 for AI, plus reasonable attorneys’ fees; collectively on all claims for relief for total compensatory damages, including trebling, of an amount to be determined at the hearing, but no less than \$4,000,000.00 for Steve and \$4,000,000.00 for AI; and for costs, pre-judgment interest, attorneys’ fee permitted by law, and for such other and further relief as the Panel deems just.

In the Statement of Answer, Respondent requested that the Panel render an award dismissing the Claim with prejudice in its entirety, as well as recommending expungement of any reference to this matter from the CRD record of unnamed party Ira Walker.

Respondent filed a request for expungement on behalf of Unnamed Party Ira Allen Walker of all references to this matter from Central Registration Depository (“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.

Claimants filed a Statement of Claim on April 22, 2019. The Statement of Claim was not served on the Respondents or considered by the Panel.

On May 10, 2021, FINRA Dispute Resolution Services received a notice of settlement. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Amended Statement of Claim.

On May 10, 2021, a Motion for Expungement was filed on behalf of Unnamed Party Ira Allen Walker, to which no response was filed.

The Panel conducted a recorded, telephonic hearing on July 7, 2021, so the parties could present oral argument and evidence on Unnamed Party Ira Allen Walker's request for expungement.

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

The Panel reviewed Ira Allen Walker'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 Ira Allen Walker did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: the pleadings; Motion for Expungement; Ira Allen Walker's and other witness' testimonies; Ira Allen Walker's BrokerCheck® Report; the Settlement Agreement; and other 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 2013273) from registration records maintained by the CRD for Unnamed Party Ira Allen Walker (CRD Number 1384774) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Ira Allen Walker 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 registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and the claim, allegation, or information is false.

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

The underlying events were 12 to 18 years ago. Mr. Walker was not a named party in the case. The Claimants moved their accounts from Respondent to UBS when Mr. Walker moved there in 2008.

Respondent sent monthly statements to not just the Claimants but also their accountant and attorney. The Claimants never complained during the time frame in question i.e. August 1, 2001 to 2008 when they transferred their accounts to UBS. They had 27 accounts at Morgan Stanley at the time and had made a significant amount of money during those years. The Claimants did not oppose expungement.

Mr. Walker and other witnesses testified that Claimants would call daily and come into the office frequently, at times placing unsolicited orders which they were authorized to place only outside the managed account which was the corporate rule. Unsolicited transactions could not take place within the managed account. All testified that the Claimants were well aware of these distinctions.

2. 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 = \$ 2,250.00

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

Member Surcharge = \$ 3,600.00

Member Process Fee = \$ 6,800.00

Postponement Fees

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

April 5-9, 2021, postponement requested by the parties

WAIVED

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: November 9, 2020 1 session

Three (3) pre-hearing sessions with the Panel @ \$1,500.00/session = \$ 4,500.00
Pre-Hearing Conferences: December 03, 2019 1 session
December 12, 2019 1 session
October 5, 2020 1 session

One (1) hearing session on expungement request @ \$1,500.00/session = \$ 1,500.00
Hearing: July 7, 2021 1 session

Total Hearing Session Fees = \$ 6,450.00

The Panel has assessed \$3,225.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$3,225.00 of the hearing session fees to Respondent which includes the fees for the July 7, 2021 expungement hearing.

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

ARBITRATION PANEL

Julian F. Santos	-	Public Arbitrator, Presiding Chairperson
Fred S. Pieroni	-	Public Arbitrator
Andrea Horowitz	-	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

Julian F. Santos

Julian F. Santos
Public Arbitrator, Presiding Chairperson

07/21/2021

Signature Date

Fred S. Pieroni

Fred S. Pieroni
Public Arbitrator

07/23/2021

Signature Date

Andrea Horowitz

Andrea Horowitz
Non-Public Arbitrator

07/20/2021

Signature Date

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July 26, 2021

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