

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Lisa Fitch Wavro

Case Number: 19-01588

vs.

Respondents
Morgan Stanley
Kevin Michael Welsh

Hearing Site: Columbia, South Carolina

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: Customer vs. Member and Associated Person

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimant Lisa Fitch Wavro (“Claimant”): Richard S. Frankowski, Esq., The Frankowski Firm, Birmingham, Alabama.

For Respondents Morgan Stanley and Kevin Michael Welsh (“Welsh”): Nicholas N. George, Esq., Morgan Stanley, New York, New York.

Hereinafter, Morgan Stanley and Welsh are collectively referred to as “Respondents”.

*FINRA recorded the appearance of Claimant’s counsel at the time of filing of the Statement of Claim. Counsel’s representation of Claimant 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: June 5, 2019.
Claimant signed the Submission Agreement: June 5, 2019.

Statement of Answer filed by Respondents on or about: August 12, 2019.
Respondents signed the Submission Agreement: August 12, 2019.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: negligence; breach of contract; failure to supervise and control; fraud; and manipulation. The causes of action relate to alleged unauthorized withdrawals from Claimant's accounts.

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, Claimant requested:

1. Compensatory damages in the amount of all losses in the account at issue;
2. Compensatory damages in the amount of all charges to the accounts;
3. Pre-judgment interest at the maximum statutory interest rate on all losses sustained from the date of the transactions until the date of the award by the Arbitration Panel, pursuant to applicable statutory law, case law and regulatory code;
4. Post-judgment interest at the maximum statutory interest rate;
5. All costs of these proceedings, including forum fees, hearing session fees and costs in bringing this action;
6. Reasonable attorney's fees in bringing this action, pursuant to applicable law and FINRA rules;
7. Costs and expenses, including expert consulting and witness fees, in an amount to be determined at the arbitration hearing; and
8. Punitive damages.

In the Statement of Answer, Respondents requested:

1. Denial of the Statement of Claim;
2. An award in favor of Respondents; and
3. Such further relief as the Panel deems just and proper.

Respondent Welsh filed a request for expungement of all references to this matter from his 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.

On July 22, 2020, Respondents filed a Motion to Dismiss Certain Claims pursuant to Rule 12206 of the Code of Arbitration Procedure ("Code"). On August 21, 2020, Claimant filed a response opposing the Motion to Dismiss Certain Claims. On August 26, 2020, Respondents filed a Reply in Support of the Motion to Dismiss Certain Claims. On September 10, 2020, the Panel heard oral arguments on the motion. On September 14, 2020, the Panel granted the motion in the limited sense that claims based on breaches of duty occurring before June 5, 2013 would be barred and would not be heard. The Panel further ruled that claims based on subsequent breaches after that date would be heard.

On August 30, 2021, Claimant filed a notice of dismissal with prejudice. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

On September 16, 2021, Respondent Welsh filed a Motion for Expungement, to which no response was filed.

The Panel conducted a recorded, telephonic hearing on November 18, 2021, so the parties could present oral argument and evidence on Welsh's request for expungement.

Claimant and her counsel participated in the expungement hearing and opposed the request for expungement.

The Panel reviewed Welsh'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 Welsh did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: pleadings; and Respondent Welsh's 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, 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 2046511) from registration records maintained by the CRD for Respondent Kevin Michael Welsh (CRD Number 2846367) with the understanding that, pursuant to Notice to Members 04-16, Respondent Kevin Michael Welsh 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, 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:

Claimant alleged Respondent Kevin Michael Welsh allowed withdrawals from her accounts by her now ex-husband without any authorization from her to do so, resulting in almost total depletion of the accounts. The Panel found that Claimant did sign authorizations for such withdrawals, received statements reflecting account activities, and raised no complaints over the two-decade history of the accounts or in her divorce from her husband.

2. 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 = \$ 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(s) that employed the associated person(s) at the time of the event(s) 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:

August 3-6, 2021, postponement requested by Parties Waived

Discovery-Related Motion Fees

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

Two (2) decisions on a discovery-related motion on the papers = \$ 400.00
with one (1) Arbitrator @ \$200.00/decision

Claimant submitted one (1) discovery-related motion
Respondents submitted one (1) discovery-related motion

Total Discovery-Related Motion Fees = \$ 400.00

The Panel has assessed \$200.00 of the discovery-related motion fees to Claimant.

The Panel has assessed \$200.00 of the discovery-related motion 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 Arbitrator(s), including a pre-hearing conference with the Arbitrator(s), which lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) pre-hearing sessions with the Panel @ \$1,125.00/session	= \$	3,375.00
Pre-Hearing Conferences: October 2, 2019	1 session	
September 10, 2020	1 session	
October 2, 2020	1 session	
One (1) hearing session on expungement request @ \$1,125.00/session	= \$	1,125.00
Hearing: November 18, 2021	1 session	
Total Hearing Session Fees	= \$	4,500.00

The Panel has assessed \$1,687.50 of the hearing session fees to Claimant.

The Panel has assessed \$2,812.50 of the hearing session fees jointly and severally to Respondents.

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

ARBITRATION PANEL

Robert H. Putnam, Jr.	-	Public Arbitrator, Presiding Chairperson
Mauricio Arcadier	-	Public Arbitrator
William Finley Hamel	-	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

Robert H. Putnam, Jr.

Robert H. Putnam, Jr.
Public Arbitrator, Presiding Chairperson

11/26/2021

Signature Date

Mauricio Arcadier

Mauricio Arcadier
Public Arbitrator

12/01/2021

Signature Date

William Finley Hamel

William Finley Hamel
Public Arbitrator

11/24/2021

Signature Date

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December 01, 2021

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