

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Noemi Escobar & Jose Betances TTEE

Case Number: 19-01935

vs.

Respondents
Morgan Stanley
Wade Robert Martin
Comerica Bank

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: Customer vs. Member, Associated Person, and Non-Member

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimant Noemi Escobar & Jose Betances TTEE: Bruce H. Nagel, Esq., Nagel Rice, LLP, Roseland, New Jersey*.

For Respondent Morgan Stanley: Joseph A. Sack, Esq., Morgan Stanley, New York, New York.

For Respondent Wade Robert Martin: Sean J. Coughlin, Esq. and Jacqueline Myers, Esq., Bressler, Amery & Ross, P.C., New York, New York.

For Respondent Comerica Bank: Francis P. Maneri, Esq., Dilworth Paxson LLP, Cherry Hill, New Jersey.

*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: July 12, 2019.

Noemi Escobar & Jose Betances TTEE signed the Submission Agreement: July 12, 2019.

Joint Statement of Answer filed by Respondents Morgan Stanley and Wade Robert Martin on or about: October 21, 2019.

Morgan Stanley signed the Submission Agreement: October 21, 2019.

Wade Robert Martin signed the Submission Agreement: October 21, 2019.

Statement of Answer filed by Respondent Comerica Bank on or about: October 21, 2019.

Comerica Bank signed the Submission Agreement: October 21, 2019.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: breach of fiduciary duty, unjust enrichment, suitability, negligence, failure to supervise, and breach of the New Jersey Prudent Investor Act. The causes of action relate to investments in CDs and United State Treasury Bills.

Unless specifically admitted in the Joint Statement of Answer, Respondents Morgan Stanley and Wade Robert Martin denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

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

RELIEF REQUESTED

In the Statement of Claim, Claimant requested that all investment management fees be returned to the Trust; unspecified compensatory damages; interest; attorneys' fees; costs; and such other and further relief as deemed just and equitable.

In the Joint Statement of Answer, Respondents Morgan Stanley and Wade Robert Martin requested that the Panel issue an award denying the Statement of Claim in its entirety; expunging all reference to this matter from Respondent Wade Robert Martin's Central Registration Depository (CRD) Records pursuant to FINRA Rule 2080; and awarding all costs against Claimant unrelated to the expungement application.

In the Statement of Answer, Respondent Comerica Bank requested that the Panel issue an award denying the Statement of Claim in its entirety; and awarding all costs against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

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

On April 15, 2021, Claimant filed a notice of settlement. Respondent Wade Robert Martin also filed a notice to keep the current panel of arbitrators in place pending a petition for expungement. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

On April 26, 2021, Respondent Wade Robert Martin filed a Motion for Expungement to which no response was filed.

The Panel conducted a recorded, telephonic hearing on June 24, 2021, so the parties could present oral argument and evidence on Wade Robert Martin's request for expungement.

Claimant and counsel did not participate in the expungement hearing. Respondent Comerica Bank also did not participate in the expungement hearing.

The Panel reviewed Wade Robert Martin'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 Wade Robert Martin 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; Respondent Wade Robert Martin's testimony; Respondent Wade Robert Martin's BrokerCheck® Report and the Settlement Agreement.

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 2015872) from registration records maintained by the CRD for Respondent Wade Robert Martin (CRD Number 1654126) with the understanding that, pursuant to Notice to Members 04-16, Respondent Wade Robert Martin 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 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:

Respondent Wade Martin presented compelling and convincing evidence to support his request for expungement. Mr. Martin has worked in the industry for more than 30 years and has had no other complaints.

The Claimant contended that Mr. Martin made or recommended unsuitable investment decisions in the special needs trust. The testimony indicates that the Petitioner-Respondent did not manage the account directly and was not involved in decision making. Mr. Martin made no recommendations or transactions on behalf of the customers. His role was limited to his capacity as relationship manager and liaison. The customers as trustees participated in the decisions. They agreed to the management of the account based on their needs and requested that monies be held in cash equivalents in anticipation of purchasing a home suitable to the needs of their grandson. The testimony indicated that the settlement with the customers was reached due to a business decision made by Morgan Stanley.

The expungement of this matter from the CRD would have no material adverse effect on investor protection, the integrity of the CRD system or regulatory requirements.

The Panel unanimously agree that expungement of the subject occurrence should be granted as the testimony and evidence presented meet the requirements of Rule 2080 (b)(1)(A), (B) &(C).

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 = \$ 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 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 = \$ 1,900.00

Member Process Fee = \$ 3,750.00

Late Pre-Hearing Cancellation Fees

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

April 19, 2021, settled by Parties = \$ 300.00

Total Late Pre-Hearing Cancellation Fees = \$ 300.00

The Panel has assessed \$150.00 of the late pre-hearing cancellation fees to Claimant.

The Panel has assessed \$150.00 of the late pre-hearing cancellation 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:

Two (2) pre-hearing sessions with the Panel @ \$1,125.00/session = \$ 2,250.00
Pre-Hearing Conferences: December 2, 2019 1 session
July 13, 2020 1 session

One (1) hearing session on expungement request @ \$1,125.00/session = \$ 1,125.00
Hearing: June 24, 2021 1 session

Total Hearing Session Fees = \$ 3,375.00

The Panel has assessed \$937.50 of the hearing session fees to Claimant.

The Panel has assessed \$375.00 of the hearing session fees jointly and severally to Respondents Morgan Stanley and Wade Robert Martin.

The Panel has assessed \$375.00 of the hearing session fees to Respondent Comerica Bank.

The Panel has assessed \$562.50 of the hearing session fees jointly and severally to Respondents.

The Panel has assessed the \$1,125.00 expungement hearing session fees to Respondent Wade Robert Martin.

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

ARBITRATION PANEL

Catherine Stewart	-	Public Arbitrator, Presiding Chairperson
Jay Alan Kranis	-	Public Arbitrator
Avram B Segall	-	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

Catherine Stewart

Catherine Stewart
Public Arbitrator, Presiding Chairperson

07/04/2021

Signature Date

Jay Alan Kranis

Jay Alan Kranis
Public Arbitrator

07/02/2021

Signature Date

Avram B Segall

Avram B Segall
Public Arbitrator

07/02/2021

Signature Date

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July 06, 2021

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