

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

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In the Matter of the Arbitration Between:

Claimants

Howard Saretsky  
Lynn Saretsky

Case Number: 19-01985

vs.

Respondents

Janney Montgomery Scott, LLC  
Timothy Edward Daly  
Donald Edward Strangfeld

Hearing Site: Boca Raton, Florida

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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 Persons

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimants Howard Saretsky and Lynn Saretsky (“Claimants”): Debora R. Moore, Esq., The Law Office of Debora R. Moore, P.A., Boynton Beach, Florida, and Steven N. Fuller, Esq., Markun Zusman Freniere Compton, LLP, Wellesley, Massachusetts.

For Respondents Janney Montgomery Scott, LLC (“JMS”), Timothy Edward Daly (“Daly”), and Donald Edward Strangfeld (“Strangfeld”), hereinafter referred to collectively as “Respondents”: Peter B. King, Esq. and Eric R. Feld, Esq., Guerra King P.A., Tampa, Florida.

\*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: July 17, 2019.  
Claimants signed the Submission Agreement: July 5, 2019.

Statement of Answer filed by Respondent JMS on or about: October 21, 2019.  
Respondent JMS signed the Submission Agreement: October 11, 2019.

Amended Statement of Claim filed on or about: January 13, 2020.  
Claimants signed the Amended Submission Agreement: February 19, 2020.

Statement of Answer to Amended Claim filed by Respondents on or about: March 27, 2020.  
Respondent JMS signed the Amended Submission Agreement: February 10, 2020.  
Respondent Daly signed the Amended Submission Agreement: February 7, 2020.  
Respondent Strangfeld signed the Amended Submission Agreement: March 27, 2020.

### **CASE SUMMARY**

In the Statement of Claim, as amended, Claimants asserted the following causes of action as to all Respondents: violation of Florida Common Law of Fraud; violation of common law negligent misrepresentation; breach of fiduciary duty; and negligence. As to Respondents JMS and Strangfeld, Claimants asserted the cause of action of negligent failure to supervise. The causes of action relate to the alleged mismanagement of Claimants' account which included unauthorized trading, unsuitable recommendations and excessive use of margin.

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

### **RELIEF REQUESTED**

In the Statement of Claim, as amended, Claimants requested: an award of forum fees and filing fees; for actual damages to Claimants of between \$100,000.00 and \$1,000,000.00 or such other amount as proven at hearing as a result of these unsuitable and fraudulent investments purchased for Claimants; for interest and all of Claimants' costs, expenses and disbursements including expert witness fees; and such other relief as the Panel deemed just and proper.

In the Statement of Answer and in the Statement of Answer to Amended Claim, Respondents requested: denial of Claimants' claims in their entirety; assessment of all forum fees and hearing session fees in connection with this arbitration proceeding against Claimants; that all records of this matter in the Central Registration Depository ("CRD") relating to Respondent JMS (CRD Number 463), Respondent Daly (CRD Number 1219609 and Occurrence Number 2041967), and Respondent Strangfeld (CRD Number 1491228 and Occurrence Number 2063678) be expunged pursuant to FINRA Rules 12805 and 2080; an award of costs; and such further relief as the Panel deems just.

Respondent JMS filed a request for expungement, on behalf of former Respondents Daly and Strangfeld, of all references to this matter from their CRD 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 January 13, 2020, Claimants filed a Motion for Leave to Amend Statement of Claim to Add Indispensable Parties: Respondents Daly and Strangfeld. The Panel granted the Motion on February 5, 2020.

On August 14, 2020, Respondents filed a Motion to Dismiss Ineligible Claims pursuant to Rule 12206 of the Code of Arbitration Procedure ("Code"). On November 2, 2020, Claimants filed a response opposing the Motion to Dismiss Ineligible Claims. On November 3, 2020, the Panel held a pre-hearing conference with the parties and granted in part Respondent JMS's Ore Tenus Motion to Strike Claimants' response opposing the Motion to Dismiss Ineligible Claims. On November 17, 2020, Respondent JMS filed a reply in support of the Motion to Dismiss Ineligible Claims. On November 30, 2020, the Panel heard oral arguments on the Motion to Dismiss Ineligible Claims. On December 2, 2020, the Panel denied the Motion to Dismiss Ineligible Claims without prejudice on the grounds that the Panel could not determine at that stage if any of the claims were ineligible.

On September 30, 2020, Claimant filed an unopposed Notice of Withdrawing Certain Claims Against Respondents Without Prejudice, with respect to Respondents Daly and Strangfeld. Therefore, the Panel made no determination with respect to any of the relief requests against Respondents Daly and Strangfeld and as to Claimants' claims against Respondents Daly and Strangfeld contained in the Statement of Claim, as amended.

On November 5, 2020, Claimants filed a Motion to Reset Deadlines. On November 16, 2020, Respondent JMS filed a response opposing the Motion to Reset Deadlines. Claimants did not file a reply in support of their Motion to Reset Deadlines. On December 2, 2020, the Panel issued an Order which granted the Motion to Reset Deadlines with respect to holding a pre-hearing conference to schedule new deadlines but denied without prejudice the request for leave to amend the Statement of Claim to add an additional theory of relief and/or bring previously dismissed Respondents Daly and Strangfeld back into the case.

On November 18, 2020, Respondent JMS filed a Motion to Compel Documents and Information. Claimants did not file a response to the Motion to Compel Documents and Information. On December 2, 2021, the Panel issued an Order granting the Motion to Compel Documents and Information.

On November 20, 2020, Claimants' Counsel, Debora R. Moore, Esq., submitted an Affidavit detailing her medical issues and explaining why Claimants missed various deadlines in the case, including the reply deadline to the aforementioned Motion to Reset Deadlines, and the response deadline to the aforementioned Motion to Compel Documents and Information.

On January 27, 2021, Respondent JMS filed a Motion for Entry of Order of Contempt and Sanctions. On February 10, 2021, Claimants filed a response opposing the Motion for Entry of Order of Contempt and Sanctions, along with a Cross Motion for Sanctions against Respondent JMS. On February 15, 2021, Respondent JMS filed a reply in support of the Motion for Entry of

Order of Contempt and Sanctions. On April 13, 2021, the Panel heard oral arguments on the Motion for Entry of Order of Contempt and Sanctions and Cross Motion for Sanctions. On April 13, 2021, the Panel granted the Motion for Entry of Order of Contempt and Sanctions in part but reserved ruling on all requests for sanctions, and reserved ruling on the Cross Motion for Sanctions.

On May 12, 2021, Respondent JMS filed a Motion to Strike Certain Claims in the Statement of Claim. The Motion requested: striking any and all allegations regarding day trading and IPO transactions from the Amended Statement of Claim; precluding Claimants from presenting any evidence on, or otherwise referencing, any day trades or IPO transactions in their accounts at final hearing pursuant to the Panel's April 13, 2021 Order; assessing all hearing and forum fees against Claimants; and for all other relief the Panel deemed just and equitable. Claimants did not file a response to the Motion to Strike Certain Claims in the Statement of Claim. On June 16, 2021, the Panel heard oral arguments on the Motion to Strike Certain Claims in the Statement of Claim. On June 16, 2021, the Panel issued an Order directing Respondent JMS to provide Claimants with a list of all trades in the subject accounts that involve IPOs and directed Claimants to identify from that list all trades they allege were unsuitable or be barred from seeking damages on those trades.

On July 30, 2021, Claimants filed a Notice of Settlement. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim, as amended.

On August 12, 2021, Respondent JMS filed an unopposed Motion for Expungement on behalf of former Respondents Daly and Strangfeld.

The Panel conducted a recorded hearing by videoconference on August 20, 2021, so the parties could present oral argument and evidence on Respondent JMS's request for expungement on behalf of former Respondents Daly and Strangfeld.

Claimants and counsel did not participate in the expungement hearing.

The Panel reviewed the BrokerCheck® Reports for former Respondents Daly and Strangfeld. The Panel noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrences 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 former Respondents Daly and Strangfeld did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: testimony, documentary evidence, and exhibits prepared from phone records, new account forms, account statements, emails, and profit/loss calculations.

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 Numbers 2041967 and 2063678) from registration records maintained by the CRD for former Respondents Timothy Edward Daly (CRD Number 1219609) and Donald Edward Strangfeld (CRD Number 1491228), respectively, with the understanding that, pursuant to Notice to Members 04-16, former Respondents Daly and Strangfeld 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.

The claim, allegation, or information is false.

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

The credible and un rebutted testimony was supported by the documentary evidence including exhibits prepared from phone records, new account forms, account statements, emails and profit/loss calculations. The evidence showed that Claimants were not as conservative as alleged, that they incurred substantial costs related to margin, that former Respondents Daly and Strangfeld advised Claimants to reduce or eliminate the use of margin, that the margin was used to fund cash withdrawals rather than to implement a trading strategy and it appeared that the spending was by or on behalf of Claimants’ sons. While Claimants took losses on some trades, their overall trading was profitable, and the losing trades were not unsuitable in the context of the overall portfolio. There was ample evidence that former Respondents Daly and Strangfeld knew their customers quite well. There was no evidence that former Respondents Daly and Strangfeld made any unsuitable recommendations or engaged in other sales practice violations or violations of any regulatory, statutory or common law duty.

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	=\$ 1,725.00
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*\*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 persons at the time of the event giving rise to the dispute. Accordingly, as a party, Respondent JMS 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 12, 2019, cancellation requested by Parties	=\$ 300.00
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Total Late Pre-Hearing Cancellation Fees	=\$ 300.00
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The Panel has assessed \$150.00 of the late pre-hearing cancellation fees jointly and severally to Claimants.

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

### Contested Motion for Issuance of Subpoena Fees

Fees apply for each decision on a contested motion for the issuance of a subpoena.

One (1) decision on a contested motion for the issuance of a subpoena with one Arbitrator @ \$200.00	=\$ 200.00
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Total Contested Motion for Issuance of Subpoena Fees	=\$ 200.00
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The Panel has assessed \$100.00 of the contested motion for issuance of subpoena fees jointly and severally to Claimants.

The Panel has assessed \$100.00 of the contested motion for issuance of subpoena fees to Respondent JMS.

**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: July 2, 2021	1 session	
One (1) pre-hearing session with the Panel @ \$1,125.00/session	= \$	1,125.00
Pre-Hearing Conference: January 15, 2020	1 session	
Five (5) pre-hearing sessions with the Panel @ \$1,300.00/session	= \$	6,500.00
Pre-Hearing Conferences: November 3, 2020	1 session	
November 30, 2020	1 session	
December 29, 2020	1 session	
April 13, 2021	1 session	
June 16, 2021	1 session	
One (1) expungement hearing session with the Panel @ \$1,300.00/session	= \$	1,300.00
Hearing: August 20, 2021	1 session	
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Total Hearing Session Fees	= \$	9,375.00

The Panel has assessed \$6,637.50 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$2,737.50 of the hearing session fees to Respondent JMS.

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

**ARBITRATION PANEL**

Will Murphy	-	Public Arbitrator, Presiding Chairperson
Joseph Benalt	-	Public Arbitrator
Andrea R. Jacobs	-	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**

***Will Murphy***

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Will Murphy  
Public Arbitrator, Presiding Chairperson

**09/01/2021**

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

***Joseph Benalt***

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Joseph Benalt  
Public Arbitrator

**09/01/2021**

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

***Andrea R. Jacobs***

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Andrea R. Jacobs  
Public Arbitrator

**09/01/2021**

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

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.

September 01, 2021

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