

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

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In the Matter of the Arbitration Between:

Claimants

Clyde Holland and  
Michele Holland

Case Number: 19-02025

vs.

Respondents

Morgan Stanley and  
Thomas Eisenhuth

Hearing Site: Orlando, 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 Person

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimants Clyde Holland and Michele Holland (“Claimants”): Randall Place, Esq., Randall Place, PA, Naples, Florida.

For Respondents Morgan Stanley a/k/a Morgan Stanley Smith Barney LLC (“Morgan Stanley”) and Thomas Eisenhuth (“Eisenhuth”), collectively “Respondents”: Christopher M. Sacco, Esq., Morgan Stanley Smith Barney LLC, St. Petersburg, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: July 23, 2019.

Claimants signed the Submission Agreement: July 17, 2019.

Statement of Answer filed on or about: October 2, 2019.

Morgan Stanley signed the Submission Agreement: October 2, 2019.

Eisenhuth signed the Submission Agreement: October 4, 2019.

### **CASE SUMMARY**

In the Statement of Claim, Claimants asserted the following causes of action: breach of fiduciary duty, negligence, negligent supervision, and breach of contract. The causes of action related to Claimants' allegation that the recommendation to invest in an auto-callable note linked to Seadrill Limited was unsuitable for conservative investors and more complicated and risky than Eisenhuth explained.

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 damages, interest, costs, attorneys' fees, and such other and further relief as the Panel deems just and proper.

In the Statement of Answer, Respondents requested the Panel enter an award denying the claims in their entirety with prejudice, assessing all forum costs against Claimants, recommending expungement of all references to this matter from Eisenhuth's registration records maintained by the Central Registration Depository ("CRD"), and granting Morgan Stanley such other and further relief as the Panel deems just and proper.

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

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

On January 15, 2021, Claimants filed a notice of settlement and dismissal with prejudice. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

On February 3, 2021, Morgan Stanley filed a Motion for Expungement on behalf of Eisenhuth, to which no response was filed.

The Panel conducted a recorded hearing by videoconference on May 3, 2021, so the parties could present oral argument and evidence on the request for expungement.

Clyde Holland and his counsel participated in the expungement hearing, on behalf of Claimants, and opposed the request for expungement.

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

In recommending expungement, the Panel relied upon the following documentary or other evidence: the pleadings, Eisenhuth's testimony, Clyde Holland's testimony, Eisenhuth's BrokerCheck® Report, and Respondents' 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 1979580) from registration records maintained by the CRD for Respondent Thomas John Eisenhuth (CRD Number 4364320) with the understanding that, pursuant to Notice to Members 04-16, Respondent Thomas John Eisenhuth 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 finding of fact:

The claim, allegation, or information is false.

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

The investment was suitable for the Claimants, based on the following testimony of Eisenhuth: (1) Eisenhuth believed the investment was suitable for Claimants; (2) Claimants' account profiles showed that Claimants' primary objective was income and their risk tolerance was moderate; (3) the investment met Claimants' objective of income and represented only approximately 7-8% of Claimants' aggregated accounts at Morgan Stanley, which was less than the 10% maximum allowed by Morgan Stanley for this type of investment and less than 2-3% of Claimants' total net worth; (4) the private placement memorandum presented the risks involved in the investments; (5) Eisenhuth explained to Claimants the risks and how the investment worked, both in person and in emails; (5) Claimants had previously invested in an almost identical investment and understood how the investment worked; and (6) Claimants made the decision to invest in the security at issue and the decision to continue holding the investment when the value declined—Eisenhuth had no discretion in the account.

2. Any and all claims for relief not specifically addressed herein are denied.



**ARBITRATION PANEL**

Gayle B. Carlson	-	Public Arbitrator, Presiding Chairperson
Ron Pekoe	-	Public Arbitrator
John Briggs	-	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**

***Gayle B. Carlson***

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Gayle B. Carlson  
Public Arbitrator, Presiding Chairperson

**05/10/2021**

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

***Ron Pekoe***

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Ron Pekoe  
Public Arbitrator

**05/10/2021**

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

***John Briggs***

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John Briggs  
Public Arbitrator

**05/10/2021**

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Signature Date

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May 10, 2021

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