

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Mary Anne Cunney

Case Number: 19-02415

vs.

Respondents
Morgan Stanley
Amy Lynn Curley
Raymond Louis George

Hearing Site: New York, New York

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 Persons

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Mary Anne Cunney: Alan L. Frank, Esq., and Kyle Kulzer, Esq., Alan L. Frank Law Associates, PC, Jenkintown, Pennsylvania.

For Respondents Morgan Stanley, Amy Lynn Curley (“Curley”), and Raymond Louis George (“George”): Andrew Gelfand, Esq., Morgan Stanley, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: August 21, 2019.

Mary Anne Cunney signed the Submission Agreement: August 21, 2019.

Joint Statement of Answer filed by Respondents on or about: November 15, 2019.

Morgan Stanley signed the Submission Agreement: November 14, 2019.

Amy Lynn Curley signed the Submission Agreement: November 14, 2019.

Raymond Louis George signed the Submission Agreement: November 14, 2019.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract; violations of FINRA Know Your Customer Rule; breach of fiduciary duty; professional negligence; failure to supervise and control person liability; and respondeat superior. The causes of action relate to IRA 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 compensatory damages in the amount of \$3,000,000.00; interest at the legal rate; costs; reasonable attorneys' fees; cost of litigation of this matter; punitive damages; and such other relief as the Panel deems just and proper.

In the Statement of Answer, Respondents requested that the Statement of Claim be denied in its entirety, and costs.

OTHER ISSUES CONSIDERED AND DECIDED

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

After Claimant's case-in-chief, Respondents Morgan Stanley, Curley, and George made a Motion to Dismiss contending that the case was barred by estoppel (prior lower court and appellate court decisions) and Statute of Limitations. Claimant contended that Respondents were not parties in the court case and that the case was filed within the statute of limitations. After due deliberation, the Panel denied Respondents' motion to dismiss.

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. Respondents Morgan Stanley and George are jointly and severally liable and shall pay to Claimant the sum of \$308,438.00 in compensatory damages.
2. Respondents Morgan Stanley and George are jointly and severally liable for and shall pay to Claimant \$600.00 to reimburse Claimant for the non-refundable portion of the filing fee previously paid to FINRA Dispute Resolution Services.
3. Claimant's claims against Respondent Curley are denied in their entirety.
4. Any and all claims for relief not specifically addressed herein, including any requests for punitive damage 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 = \$ 2,000.00

**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 persons at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent Morgan Stanley is assessed the following:

Member Surcharge = \$ 3,025.00
Member Process Fee = \$ 6,175.00

Discovery-Related Motion Fees

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

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

Claimant submitted one (1) discovery-related motion

Total Discovery-Related Motion Fees = \$ 200.00

The Panel has assessed the total discovery-related motion fees to Claimant.

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:

Two (2) pre-hearing sessions with the Panel @ \$1,400.00/session = \$ 2,800.00
Pre-hearing Conferences: December 4, 2019 1 session
July 27, 2020 1 session

Seven (7) hearing sessions @ \$1,400.00/session = \$ 9,800.00
Hearing Dates: January 25, 2021 2 sessions
January 26, 2021 2 sessions
January 27, 2021 2 sessions
January 28, 2021 1 session

Total Hearing Session Fees = \$ 12,600.00

The Panel has assessed \$6,300.00 of the hearing session fees to Claimant.
The Panel has assessed \$4,900.00 the hearing session fees jointly and severally to Respondents Morgan Stanley and George.

The Panel has assessed \$1,400.00 the hearing session fees jointly and severally to Respondents Morgan Stanley, Curley and George.

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

ARBITRATION PANEL

Elizabeth Gilbert	-	Public Arbitrator, Presiding Chairperson
Eugene G. P. Byrne	-	Public Arbitrator
Sofia Balile	-	Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Concurring Arbitrators' Signatures

Elizabeth Gilbert

Elizabeth Gilbert
Public Arbitrator, Presiding Chairperson

02/02/2021

Signature Date

Eugene G. P. Byrne

Eugene G. P. Byrne
Public Arbitrator

02/04/2021

Signature Date

Sofia Balile

Sofia Balile
Public Arbitrator

02/02/2021

Signature Date

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February 04, 2021

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