

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Scort, C.A., Sociedad De Corretaje De Seguros

Case Number: 19-03148

vs.

Respondent

Morgan Stanley Smith Barney, LLC
Paquita Patricia Holder

Hearing Site: Boca Raton, Florida

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 Scort, C.A., Sociedad De Corretaje De Seguros (“Claimant”): Lars Kristian Soreide, Esq., Soreide Law Group, PLLC, Pompano Beach, Florida.

For Respondents Morgan Stanley Smith Barney, LLC (“Morgan Stanley”) and Paquita Patricia Holder (“Holder”), hereinafter collectively “Respondents”: Christopher M. Sacco, Esq., Morgan Stanley Smith Barney, LLC, St. Petersburg, Florida.

*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: October 18, 2019.

Claimant signed the Submission Agreement: October 18, 2019.

Statement of Answer filed by Respondents on or about: January 10, 2020.

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

Respondent Holder signed the Submission Agreement: November 14, 2019.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: negligence, breach of fiduciary duty, negligent supervision, and fraud. The causes of action relate to the purchase, sale, and recommendation of investments and bonds.

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: damages of approximately \$500,000.00 and reserved its right to amend that figure at the final hearing, punitive damages, interest, costs, and any further relief this the Panel deems just and proper.

In the Statement of Answer, Respondents requested: the Panel deny the claim in its entirety with prejudice, assess all forum costs against Claimant, and grant Respondent such other and further relief as the Panel deems just and appropriate.

Respondent Morgan Stanley filed a request for expungement, on behalf of Respondent Holder, of all references to this matter from 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 27, 2021, Claimant filed a notice of settlement and voluntary dismissal with prejudice. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

On August 26, 2021, Respondent Morgan Stanley filed a Motion for Expungement on behalf of Respondent Holder, to which no response was filed.

The Panel conducted a recorded, telephonic hearing on December 13, 2021, so the parties could present oral argument and evidence on Respondent Morgan Stanley's request for expungement on behalf of Respondent Holder.

Claimant and counsel did not participate in the expungement hearing. The Panel found that Claimant had notice of the expungement request and hearing.

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

In recommending expungement, the Panel relied upon the following documentary or other evidence: exhibits, broker notes, confirmations, the new account form, Respondent Holder's BrokerCheck® Report, the settlement agreement, and emails.

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 2046964) from registration records maintained by the CRD for Respondent Paquita Patricia Holder (CRD Number 2894768) with the understanding that, pursuant to Notice to Members 04-16, Respondent Paquita Patricia Holder 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 trades in dispute took place in Claimant's accounts in 2017 and Claimant did not allege that the trades were unauthorized or unsuitable until 2019. Claimant received confirmations which showed unsolicited transactions in Venezuelan bonds. Claimant moved its account back to another broker at Respondent Morgan Stanley, where Claimant purchased some of the same securities they claim were previously purchased without their authorization. Claimant engaged in a margin strategy for over twenty (20) years, and after having left Respondent Holder, did not want to unwind transactions even after warnings by the subsequent broker. Therefore, the Panel determined this was a suitable strategy. The settlement agreement was for a small portion of the original claim sought. Respondent Holder was named in the arbitration action, but did not contribute to the settlement, which was not conditioned on an agreement to expunge. Claimant elected not to participate in the expungement hearing, and the Panel determined that Claimant had notice.

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	= \$	1,425.00
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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 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

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 with one (1) Arbitrator @ \$200.00/decision	= \$	200.00
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Claimant submitted one (1) discovery-related motion

Total Discovery-Related Motion Fees	= \$	200.00
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The Panel has assessed \$100.00 of the discovery-related motion fees to Claimant.

The Panel has assessed \$100.00 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:

One (1) pre-hearing session with the Panel @ \$1,125.00/session	= \$	1,125.00
Pre-Hearing Conference: February 11, 2020	1 session	

One (1) hearing session on expungement request @ \$1,125.00/session	= \$	1,125.00
Hearing: December 13, 2021	1 session	

Total Hearing Session Fees	= \$	2,250.00
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The Panel has assessed \$562.50 of the hearing session fees to Claimant.

The Panel has assessed \$1,687.50 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

Mark C. Perry	-	Public Arbitrator, Presiding Chairperson
Daniel Joseph Chiodo	-	Public Arbitrator
Mary C. Walsh	-	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

Mark C. Perry

Mark C. Perry
Public Arbitrator, Presiding Chairperson

12/22/2021

Signature Date

Daniel Joseph Chiodo

Daniel Joseph Chiodo
Public Arbitrator

12/22/2021

Signature Date

Mary C. Walsh

Mary C. Walsh
Public Arbitrator

12/22/2021

Signature Date

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December 22, 2021

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