

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Mary Susie McAllister Morton
The Susie McAllister Morton Living Trust dtd
05/06/02

Case Number: 19-03229

vs.

Respondent

Morgan Stanley Smith Barney LLC

Hearing Site: Los Angeles, California

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

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimants Mary Susie McAllister Morton and The Susie McAllister Morton Living Trust dtd 05/06/02 (collectively “Claimants”): Philip M. Aidikoff, Esq., Aidikoff, Uhl & Bakhtiari, Beverly Hills, California.

For Respondent Morgan Stanley Smith Barney LLC (“Respondent”): Elizabeth H. Lindh, Esq. and Connor M. Trafton, Esq., Keesal, Young & Logan, Long Beach, California.

CASE INFORMATION

Statement of Claim filed on or about: October 28, 2019.
Claimants signed the Submission Agreement: October 22, 2019.

Statement of Answer filed by Respondent on or about: January 31, 2020.
Respondent signed the Submission Agreement: January 31, 2020.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: breach of fiduciary duty; constructive fraud; fraud by misrepresentation and omission; breach of written contract; failure to supervise and control; and violation of state and federal securities laws, FINRA rules of

fair practice and NYSE rules. The causes of action relate to structured notes, Unit Investment Trusts, and other unspecified securities.

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

RELIEF REQUESTED

In the Statement of Claim, Claimants requested:

1. General and compensatory damages in an amount according to proof, but not less than \$685,610.00;
2. Lost opportunity cost in an amount according to proof;
3. Rescission of all unsuitable investments Respondent recommended;
4. Cost of proceedings;
5. Punitive damages in an amount according to proof;
6. Interest at the legal rate on all sums recovered;
7. Attorneys' fees and costs; and
8. Such other and further relief as this Panel deems just and appropriate.

In the Statement of Answer, Respondent requested:

1. Claimant's claims be denied;
2. An award entered in favor of Respondent;
3. This matter be expunged from the Central Registration Depository ("CRD") records of Unnamed Party Francis James Aurino; and
4. Such further relief as the Panel deems just and proper.

Respondent filed a request for expungement on behalf of Unnamed Party Francis James Aurino of all references to this matter from 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.

During the recorded evidentiary hearing, the parties presented oral argument and evidence on Unnamed Party Francis James Aurino's request for expungement.

Claimants opposed the request for expungement.

The Panel reviewed Unnamed Party Francis James Aurino's BrokerCheck® Report.

In recommending expungement, the Panel relied upon the following documentary or other evidence: pleadings; testimony from witnesses; testimony from expert witnesses; and exhibits, including multiple years of monthly account statements, confirmations, prospectuses, e-mails, multiple telephone log sheets showing the frequency of communications between Mary Susie McAllister Morton and Francis James Aurino, and expert analyses.

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. Claimants' claims are denied in their entirety.
2. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2035502) from registration records maintained by the CRD for Unnamed Party Francis James Aurino (CRD Number 1754375) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Francis James Aurino 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:

Claimants' allegations are false. Over a span of 20 years, Francis James Aurino made over \$2 million of profit for Claimants in a non-discretionary account despite Mary Susie McAllister Morton's refusal to consider investing in stocks and despite her level of spending which far outpaced the income being earned and thereby consumed the capital in her account. When the transactions now complained of settled and Mary Susie McAllister Morton received return of her principal in full and interest well above the prevailing market rates, she frequently called Francis James Aurino to inquire how soon he could purchase another similar security for her. Considering Mary Susie McAllister Morton's frequent conversations with Francis James Aurino, her close supervision and nearly daily review of her account, she had ample opportunity to inquire or complain about any of the 49 transactions over multiple years that first became at issue in this action.

3. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages and attorneys' fees, are denied.

FEES

Pursuant to the 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

**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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge = \$ 2,475.00

Member Process Fee = \$ 5,075.00

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:

Four (4) pre-hearing sessions with the Panel @ \$1,300.00/session = \$ 5,200.00

Pre-Hearing Conferences: February 11, 2020 1 session
August 31, 2020 1 session
March 24, 2021 1 session
January 6, 2022 1 session

Twelve (12) hearing sessions @ \$1,300.00/session = \$ 15,600.00

Hearings: February 7, 2022 2 sessions
February 8, 2022 2 sessions
February 9, 2022 2 sessions
February 16, 2022 2 sessions
February 17, 2022 4 sessions

Total Hearing Session Fees = \$ 20,800.00

The Panel has assessed \$9,750.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$9,750.00 of the hearing session fees to Respondent.

The Panel has waived \$1,300.00 of the hearing session fees.

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

ARBITRATION PANEL

George Herman Frisch	-	Public Arbitrator, Presiding Chairperson
Anita Rae Shapiro	-	Public Arbitrator
Alina Landver	-	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

George Herman Frisch

George Herman Frisch
Public Arbitrator, Presiding Chairperson

03/01/2022

Signature Date

Anita Rae Shapiro

Anita Rae Shapiro
Public Arbitrator

03/02/2022

Signature Date

Alina Landver

Alina Landver
Public Arbitrator

03/01/2022

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.

March 03, 2022

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