

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Adolph Garcia
Elsie Garcia
Garcia Family Trust

Case Number: 19-03588

vs.

Respondents

Morgan Stanley
George Joseph Strnad

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 and Associated Person

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimants Adolph Garcia, Elsie Garcia, and Garcia Family Trust: J. Ryan Gustafson, Esq., GUSTAFSON PC, Los Angeles, California.*

Hereinafter, Adolph Garcia, Elsie Garcia, and Garcia Family Trust are collectively referred to as “Claimants”.

For Respondents Morgan Stanley and George Joseph Strnad (“Strnad”): Jeffrey P. Palmer, Esq., Greenberg Traurig, LLP, East Palo Alto, California.

Hereinafter, Morgan Stanley and Strnad are collectively referred to as “Respondents”.

*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: December 4, 2019.
Claimants signed the Submission Agreement: December 5, 2019.

Statement of Answer filed by Respondents on or about: February 14, 2020.
Morgan Stanley signed the Submission Agreement: February 14, 2020.
Strnad signed the Submission Agreement: February 12, 2020.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: breach of fiduciary duty; negligence; fraud; intentional misrepresentation; and elder abuse. The causes of action relate to various unspecified securities.

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:

1. Expedited pre-hearing, hearing, and arbitration priority due to the age of Claimants;
2. Actual damages according to proof;
3. Treble damages pursuant to Cal. Civ. Code §3345;
4. Punitive damages;
5. Pre- and post-judgement interest;
6. Attorneys' fees and costs of suit; and
7. Any other relief that the Panel deems just and proper.

In the Statement of Answer, Respondents requested:

1. Denial of Claimants' claims in their entirety;
2. Claimants take nothing by reason of the Statement of Claim;
3. Recommendation from the Panel that these claims be expunged from Strnad's Central Registration Depository ("CRD") registration records; and
4. Whatever relief the Panel may deem appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

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

On July 22, 2020, Respondents filed a Motion to Dismiss pursuant to Rule 12206 of the Code of Arbitration Procedure ("Code"). On August 4, 2020, Claimants filed a response opposing the motion. On August 10, 2020, Respondents filed their reply in support of the motion. On August 31, 2021, the Panel heard oral arguments on the Motion to Dismiss. On September 8, 2020, the Panel granted the Motion to Dismiss in part on the grounds that claims related to or arising out of conduct, transactions, occurrences or events that took place prior to December 4, 2014 are ineligible for submission to arbitration pursuant to FINRA Rule 12206 and are barred from being asserted during the arbitration hearing.

On April 25, 2021, Claimants filed a notice of 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 May 11, 2021, Strnad filed a Motion for Expungement, to which no response was made.

The Panel conducted a recorded hearing by videoconference on August 26, 2021, so the parties could present oral argument and evidence on Strnad's request for expungement.

Claimants did not participate in the expungement hearing.

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

In recommending expungement, the Panel relied upon the following documentary or other evidence: pleadings; Strnad's motion for expungement; exhibits; and Strnad's testimony.

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 2056549) from registration records maintained by the CRD for Respondent George Joseph Strnad II (CRD Number 1635225) with the understanding that, pursuant to Notice to Members 04-16, Respondent George Joseph Strnad II 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, 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:

In 2009, Strnad was employed by Morgan Stanley and recommended Adolph Garcia and Elsie Garcia to consider purchasing various funds for their portfolio while meeting their investment objectives. Claimants brought an action against Strnad alleging that he: (1) defrauded them, (2) they were misled about investments, (3) their investments were unsuitable for their investment objectives, and (4) Respondents violated FINRA regulations. As a result of the complaint, Morgan Stanley reported the complaint on Strnad's CRD.

No opposition to Strnad's motion for expungement was received from either Claimants or Morgan Stanley. Morgan Stanley paid damages to settle the matter and in supervising Strnad, Morgan Stanley chose not to comment on the motion for expungement.

The evidence shows that Strnad spoke with Adolph Garcia and Elsie Garcia regularly and that Strnad worked closely with them to create a diversified portfolio. The portfolio included investments in exchange-traded funds and closed-end funds in energy-related investments, such as midstream Master Limited Partnerships engaged in the business of transporting and storing natural resources, such as oil and gas. The goal of the investments was to generate growth and income that Claimants sought. In 2015, Claimants' investments declined in value due to market conditions.

FINRA Rule 2080 allows for expungement when: (A) the claim, allegation, or information is factually impossible or clearly erroneous; (B) the registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; or (C) the claim, allegation, or information is false.

Based on the facts presented, Strnad's claim for expungement is granted and is supported by FINRA Rule 2080. Strnad was not responsible for the sudden and unexpected downturn in the energy sector, the downturn effect on Claimants' portfolio, or Claimants' decisions to exit the market at the bottom without giving their investments a chance to recover which Strnad warned against. Additionally, the evidence presented shows that Strnad regularly communicated with Adolph Garcia and Elsie Garcia to ensure they remained comfortable with their investments and investment strategies.

Strnad as a financial advisor is not a guarantor of performance of the market. The claim, allegation, or information by Claimants was false. It is recommended that the expungement of all claims and events pertaining to the Claimants, including Occurrence Number 2056549, be expunged from Strnad's CRD records.

2. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, treble 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	= \$ 1,575.00
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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(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Morgan Stanley is assessed the following:

Member Surcharge	= \$	1,900.00
Member Process Fee	= \$	3,750.00

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:

Two (2) pre-hearing sessions with the Panel @ \$1,125.00/session	= \$	2,250.00
Pre-Hearing Conferences: April 13, 2020	1 session	
August 31, 2020	1 session	
One (1) hearing session on expungement request @ \$1,125.00/session	= \$	1,125.00
Hearing: August 26, 2021	1 session	
Total Hearing Session Fees	= \$	3,375.00

The Panel has assessed \$1,125.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$1,125.00 of the hearing session fees jointly and severally to Respondents.

The Panel has assessed \$1,125.00 of the hearing session fees to Strnad.

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

ARBITRATION PANEL

Natalie Panossian-Bassler	-	Public Arbitrator, Presiding Chairperson
Joyce L. Hurley	-	Public Arbitrator
Kirtley M. Thiesmeyer	-	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

Natalie Panossian-Bassler

Natalie Panossian-Bassler
Public Arbitrator, Presiding Chairperson

09/16/2021

Signature Date

Joyce L. Hurley

Joyce L. Hurley
Public Arbitrator

09/16/2021

Signature Date

Kirtley M. Thiesmeyer

Kirtley M. Thiesmeyer
Public Arbitrator

09/16/2021

Signature Date

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September 17, 2021

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