

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants
Janelle Salon
Salon Family Trust

Case Number: 19-03662

vs.

Respondents
Morgan Stanley
Perry Allen Basch

Hearing Site: Las Vegas, Nevada

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 Janelle Salon and Salon Family Trust (collectively “Claimants”): Gus W. Flangas, Esq. and Kimberly P. Stein, Esq., Flangas Dalacas Law Group, Las Vegas, Nevada.

For Respondents Morgan Stanley and Perry Allen Basch (collectively “Respondents”): Peter R. Boutin, Esq. and Teresa J. Thong, Esq., Keesal, Young & Logan, San Francisco, California.

CASE INFORMATION

Statement of Claim filed on or about: January 30, 2020.
Claimants signed the Submission Agreement: January 31, 2020.

Statement of Answer filed by Respondents on or about: April 20, 2020.
Perry Allen Basch signed the Submission Agreement: April 20, 2020.
Morgan Stanley signed the Submission Agreement: April 21, 2020.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action against Respondents: breach of contract; breach of implied covenant of good faith and fair dealing;

tortious breach of implied covenant of good faith and fair dealing; breach of fiduciary duty; fraud in the inducement; fraud; deceptive trade practices; constructive fraud; negligent misrepresentation; gross negligence; negligence; unjust enrichment; conversion; constructive trust; Nevada civil racketeering; civil conspiracy; and exploitation. Claimants asserted negligent supervision as a cause of action against Morgan Stanley. In addition, Claimants asserted the following causes of action against Perry Allen Basch: breach of confidential relationship; professional malpractice; and churning. The causes of action relate to Claimants' investment in the Umbrella Investment Plan.

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. Unspecified special damages;
2. Unspecified general damages;
3. Punitive damages;
4. Reasonable attorneys' fees and costs; and
5. Such other and further relief as just and proper in the premises.

In the Statement of Answer, Respondents requested:

1. Claimants' claims be dismissed with prejudice; and
2. Expungement of this proceeding from Perry Allen Basch's Central Registration Depository ("CRD") records.

OTHER ISSUES CONSIDERED AND DECIDED

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

On March 3, 2021, the parties stipulated and Claimants dismissed the following causes of action against Respondents without prejudice: breach of implied covenant of good faith and fair dealing; tortious breach of implied covenant of good faith and fair dealing; fraud in the inducement; deceptive trade practices; constructive fraud; negligent misrepresentation; gross negligence; negligence; unjust enrichment; conversion; constructive trust; Nevada civil racketeering; civil conspiracy; and exploitation. Claimants also dismissed the following causes of action filed against Perry Allen Basch without prejudice: breach of confidential relationship; professional malpractice; and churning.

The parties further agreed that the hearing of this matter be limited to the following causes of action: breach of contract; breach of fiduciary duty; and fraud filed by Claimants against Respondents; and a cause of action of negligent supervision filed by Claimants against Morgan Stanley.

On June 24, 2021, after the conclusion of Claimants' case-in-chief, Respondents moved for dismissal of Claimants' claims pursuant to FINRA Rule 12504(b) of the Code of Arbitration Procedure ("Code"). Claimants objected. After hearing the oral arguments from the parties, the Panel ordered the parties to supplement their arguments with written briefs. On July 1, 2021,

Respondents filed their initial brief for motion to dismiss. On July 8, 2021, Claimants filed their responsive brief opposing the motion. On July 13, 2021, Respondents filed their reply brief in support of the motion. On July 20, 2021, after due deliberation, the Panel denied Respondents' motion to dismiss without prejudice.

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. Respondent Perry Allen Basch's (CRD number 839696) request for expungement of the above-captioned arbitration (Occurrence Number 2004664) from registration records maintained by the CRD is denied.
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	= \$	1,575.00
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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(s) 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

Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

April 5-9, 2021, postponement requested by Claimants	=	WAIVED
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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: May 12, 2020	1 session	
March 9, 2021	1 session	
Twelve (12) hearing sessions @ 1,125.00/session	= \$	13,500.00
Hearings: June 21, 2021	2 sessions	
June 22, 2021	2 sessions	
June 23, 2021	2 sessions	
June 24, 2021	2 sessions	
August 30, 2021	2 sessions	
August 31, 2021	2 sessions	

Total Hearing Session Fees = \$ 15,750.00

The Panel has assessed \$7,875.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$7,875.00 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

Elliott Finkel	-	Public Arbitrator, Presiding Chairperson
Andrew M. Mintzer	-	Public Arbitrator
Robert B. Hansohn	-	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

Elliott Finkel

Elliott Finkel
Public Arbitrator, Presiding Chairperson

09/17/2021

Signature Date

Andrew M. Mintzer

Andrew M. Mintzer
Public Arbitrator

09/17/2021

Signature Date

Robert B. Hansohn

Robert B. Hansohn
Public Arbitrator

09/17/2021

Signature Date

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September 17, 2021

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