

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Kendall Charles Montgomery, as Trustee of the Montgomery Children's 1998 Trust and as Independent Executor of the Estate of the Charles Hunter Montgomery, Deceased

Case Number: 20-00456

vs.

Respondent

Morgan Stanley Smith Barney, LLC f/k/a Smith Barney, a Member of Travelers Group

Hearing Site: Houston, Texas

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

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Kendall Charles Montgomery, as Trustee of the Montgomery Children's 1998 Trust and as Independent Executor of the Estate of the Charles Hunter Montgomery, Deceased ("Claimant"): Fred Hagans, Esq., Hagans Montgomery Hagans, Houston, Texas and Paul K. Nesbitt, Esq., Kelly, Sutter & Kendrick, P.C., Houston, Texas.

For Respondent Morgan Stanley Smith Barney, LLC f/k/a Smith Barney, a Member of Travelers Group ("Respondent"): Jeremy S. Winer, Esq., Morgan Stanley Smith Barney, LLC, New York, New York and Donald Littlefield, Esq., Bressler, Amery & Ross, P.C.

CASE INFORMATION

Statement of Claim filed on or about: February 7, 2020.

Claimant signed the Submission Agreement: February 7, 2020.

Statement of Answer filed on or about: March 31, 2020.

Respondent signed the Submission Agreement: March 31, 2020.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: breach of fiduciary duty, negligence, gross negligence, negligent misrepresentation and omissions, and fraudulent concealment. The causes of action related to Claimant's allegation that, due to Respondent's failures, the accumulated cash value of a life insurance policy issued by Aetna Life Insurance & Annuity was lost to the intended beneficiaries, although Respondent earned thousands of dollars in commissions.

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, Claimant requested actual damages and exemplary damages; prejudgment interest as provided by law; reasonable attorneys' fees pursuant to the terms of the agreements between the parties and/or the FINRA Code of Arbitration for Customer Disputes, or, alternatively, Tex. Civ. Prac. & Rem. Code § 38.001; post-judgment interest as provided by law; costs and expenses incurred in this arbitration proceeding; and such other and further relief to which Claimant may be justly entitled.

In the Statement of Answer, Respondent requested that the claims against it be denied in their entirety and that Claimant be denied his requested relief.

OTHER ISSUES CONSIDERED AND DECIDED

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

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. Respondent is liable for and shall pay to Claimant the sum of \$172,438.00 in compensatory damages.
2. Respondent is liable for and shall pay to Claimant the sum of \$375.00 in costs as reimbursement of the non-refundable portion of the Initial Claim Filing Fee.
3. 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 of Arbitration Procedure, 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

**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 = \$ 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

Respondent 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.

Contested Motion for Issuance of Subpoena Fees

Fees apply for each decision on a contested motion for the issuance of a subpoena.

One (1) decision on a contested motion for the issuance of a subpoena with one Arbitrator @ \$200.00 = \$ 200.00

Total Contested Motion for Issuance of Subpoena Fees = \$ 200.00

The Panel has assessed the total contested motion for issuance of subpoena fees to Respondent.

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: June 3, 2020 1 session
December 17, 2020 1 session

Ten (10) hearing sessions @ \$1,125.00/session = \$ 11,250.00

Hearings:	April 26, 2021	2 sessions
	April 27, 2021	2 sessions
	April 28, 2021	2 sessions
	April 29, 2021	2 sessions
	April 30, 2021	2 sessions

Total Hearing Session Fees = \$ 13,500.00

The Panel has assessed \$4,837.50 of the hearing session fees to Claimant.

The Panel has assessed \$8,662.50 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Thomas A. Martin	-	Public Arbitrator, Presiding Chairperson
Michael Hendryx	-	Public Arbitrator
Jonathan Charles Day	-	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

Thomas A. Martin

Thomas A. Martin
Public Arbitrator, Presiding Chairperson

05/10/2021

Signature Date

Michael Hendryx

Michael Hendryx
Public Arbitrator

05/11/2021

Signature Date

Jonathan Charles Day

Jonathan Charles Day
Public Arbitrator

05/10/2021

Signature Date

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May 11, 2021

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