

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimants

Nirmada Kaufman  
Nirmada Lauren Ann Kaufman Revocable Trust

Case Number: 20-02209

vs.

Respondents

Morgan Stanley  
Peter John Waterloo

Hearing Site: San Francisco, California

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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 Nirmada Kaufman and Nirmada Lauren Ann Kaufman Revocable Trust (“Claimants”): Bradford M. Gucciardo, Esq., Gucciardo Law Group, PA, Lakewood Ranch, Florida.

For Respondents Morgan Stanley and Peter John Waterloo (“Waterloo”): Kathleen Salvaty, Esq., Morgan Stanley Legal and Compliance Division, Los Angeles, California.

Hereinafter Morgan Stanley and Waterloo 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: July 13, 2020.

Claimants signed the Submission Agreement: July 13, 2020.

Statement of Answer filed by Respondents on or about: October 7, 2020.  
Morgan Stanley signed the Submission Agreement: October 7, 2020.  
Waterloo signed the Submission Agreement: October 8, 2020.

### **CASE SUMMARY**

In the Statement of Claim, Claimants asserted the following causes of action against Respondents: breach of fiduciary duty; negligence; violation of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5; unsuitability; common law fraud; negligent misrepresentation; and breach of contract. In addition, Claimants asserted the following causes of action against Morgan Stanley: negligent supervision; violation of Section 20(a) of the Securities Exchange Act of 1934; and respondeat superior/vicarious liability. The causes of action relate to the Advisory Accounts maintained by Respondents.

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 compensatory damages;
2. Consequential damages;
3. Punitive damages;
4. Reasonable attorneys' fees;
5. Expert fees;
6. Pre and Post-Award interest at the highest rate allowable by law;
7. Costs, expenses, filing and forum fees incurred herein;
8. Disgorgement; and
9. Such other and further relief in Claimants' favor which the Panel deems just, equitable, and proper.

In the Statement of Answer, Respondents requested:

1. Claimants' claim be denied;
2. An award in favor of Respondents;
3. Expungement of this matter from Waterloo's Central Registration Depository ("CRD") records; and
4. Such other further relief as the Panel deems just and proper.

Respondents filed a request for expungement, on behalf of Waterloo 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.

On June 5, 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 June 22, 2021, Respondents filed a Motion for Expungement on behalf of Waterloo, to which no response was filed.

The Panel conducted a recorded hearing by videoconference on August 25, 2021, so the parties could present oral argument and evidence on Waterloo's request for expungement.

Claimants did not participate in the expungement hearing.

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

In recommending expungement, the Panel relied upon the following documentary or other evidence: Waterloo's BrokerCheck® Report; the settlement agreement; and exhibits admitted at the hearing.

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 2076686) from registration records maintained by the CRD for Respondent Peter John Waterloo (CRD Number 1249769) with the understanding that, pursuant to Notice to Members 04-16, Respondent Peter John Waterloo 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; and

The claim, allegation, or information is false.

The Panel has made the above Rule 2080 findings based on the following reasons:

Under FINRA Rule 2080, the Panel affirmatively finds that the claim, allegation, and information on which the Statement of Claim was based are clearly erroneous; and that the claim, allegation, and information on which the Statement of Claim was based are false. The Panel affirmatively finds that the Statement of Claim is replete with demonstrably false allegations and quotations. In attempting to support the false allegations and claims in the Statement of Claim, Claimants engaged in discovery abuses including the doctoring, manipulation, and withholding of documents for the purpose of misleading the panel.

2. 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 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	= \$	1,575.00
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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:

August 24-27, 2021, postponement requested by Parties	= \$	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:

One (1) pre-hearing session with the Panel @ \$1,125.00/session	= \$	1,125.00
Pre-Hearing Conference: November 20, 2020	1 session	

One (1) hearing session on expungement request @ \$1,125.00/session	= \$	1,125.00
Hearing: August 25, 2021	1 session	

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Total Hearing Session Fees = \$ 2,250.00

Per the Parties' Agreement, \$562.50 of the hearing session fees are assessed to Morgan Stanley.

The Panel has assessed \$562.50 of the hearing session fees jointly and severally to Respondents.

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

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

**ARBITRATION PANEL**

Robert James Favole	-	Public Arbitrator, Presiding Chairperson
Clifford A. Threlkeld	-	Public Arbitrator
Norman D Menegat	-	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**

***Robert James Favole***

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Robert James Favole  
Public Arbitrator, Presiding Chairperson

**08/30/2021**

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Signature Date

***Clifford A. Threlkeld***

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Clifford A. Threlkeld  
Public Arbitrator

**08/27/2021**

\_\_\_\_\_  
Signature Date

***Norman D Menegat***

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Norman D Menegat  
Public Arbitrator

**08/30/2021**

\_\_\_\_\_  
Signature Date

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August 31, 2021

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