

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Michael Robinson

Case Number: 20-02377

vs.

Respondents
Morgan Stanley
Janney Montgomery Scott LLC
Jeffrey Scott Kemp

Hearing Site: Boca Raton, Florida

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. Members and Associated Person

REPRESENTATION OF PARTIES

For Claimant Michael Robinson: Neil A. Sussman, Esq., Sussman & Frankel, LLP, New York, New York.

For Respondent Morgan Stanley: Jeremy S. Winer, Esq., Morgan Stanley, New York, New York.

For Respondents Janney Montgomery Scott LLC (“JMS”) and Jeffrey Scott Kemp (“Kemp”): Theodore R. Snyder, Esq., Murphy & McGonigle, New York, New York.

*FINRA recorded the appearance of Claimant’s counsel at the time of filing of the Statement of Claim. Counsel’s representation of Claimant may have ended with the parties’ settlement. Please see the Other Issues Considered and Decided section of this Award for information on whether Claimant’s counsel appeared at the expungement hearing.

CASE INFORMATION

Statement of Claim filed on or about: July 27, 2020.

Michael Robinson signed the Submission Agreement: July 27, 2020.

Statement of Answer filed by Respondent Morgan Stanley on or about: October 16, 2020.

Morgan Stanley signed the Submission Agreement: October 14, 2020.

Statement of Answer filed by Respondents JMS and Kemp on or about: October 15, 2020.

Respondent JMS signed the Submission Agreement: October 13, 2020.

Respondent Kemp signed the Submission Agreement: October 13, 2020.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: negligence; misrepresentation; breach of contract, including breach of the covenant of good faith and fair dealing; Violation of Federal Securities Laws including §10(b) of the Securities Exchange Act of 1934, as amended, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5; failure to supervise; violation of the Florida Securities & Investor Protection Act, Section 517; fraud; breach of duty; and elder abuse. The causes of action relate to the purchase of 5000 shares of Seadrill Partners LLC in Claimant's accounts while Respondent Kemp was employed with Respondent Morgan Stanley through August 2015, and the use of margin for high-yield micro-cap equities and funds in Claimant's accounts while Respondent Kemp was employed with Respondent JMS thereafter, including, but not limited to: Alliance Resource Partners, L.P.; Midstream Partners LP; CrossAmerica Partners LP; Delek Logistics Partners, LP; Eagle Point Credit Company Inc.; Global Partners LP; Golar LNG Partners LP; Green Plains Partners LP; Holly Energy Partners, LP; Natural Resource Partners LP; Oxford Lane Capital Corp; Prospect Capital Corp.; Saratoga Investment Corp.; Seadrill Partners LLC; USA Compression Partners, LP; USD Partners LP; and Vermillion Energy Inc.

In its Statement of Answer, Respondent Morgan Stanley denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

In their Statement of Answer, Respondents JMS and Kemp denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: compensatory damages of at least \$82,000.00 from Respondents Morgan Stanley and Kemp; compensatory damages of at least \$750,000.00 from Respondents JMS and Kemp; well-managed account damages of at least \$456,648.00 from Respondents JMS and Kemp; disgorgement of commissions and fees; statutory interest; statutory attorneys' fees and costs; and exemplary damages.

In its Statement of Answer, Respondent Morgan Stanley requested that the claims against it be denied and that Claimant be denied the relief sought in the Statement of Claim.

In their Statement of Answer, Respondents JMS and Kemp requested: dismissal of Claimant's Statement of Claim in all respects; an assessment of all forum fees against Claimant; and expungement of any and all references to Occurrence Number 2083714 from Respondent Kemp's Central Registration Depository ("CRD") records.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

On October 4, 2021, Claimant filed a partial notice of settlement as to Respondent Morgan Stanley only. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim as to Respondent Morgan Stanley.

On October 13, 2021, Claimant filed a notice of settlement with Respondents JMS and Kemp and requested that the case remain open so Respondents JMS and Kemp could request expungement of any and all reference to this case (Occurrence Number 2083714) from Respondent Kemp's CRD records. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

On October 21, 2021, Respondents JMS and Kemp filed a Motion for Expungement, to which Respondent Morgan Stanley did not file a response. Claimant advised that he did not take a position on Respondents JMS and Kemp's request for expungement.

The Panel conducted a recorded, telephonic hearing on October 26, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Claimant and Respondent Morgan Stanley did not participate in the expungement hearing. The Panel found that Claimant and Respondent Morgan Stanley had notice of the expungement request and hearing and elected not to attend.

The Panel reviewed Claimant's current BrokerCheck® Report. The Panel noted that a prior arbitration panel or court did not previously rule on expungement of the same occurrence in the CRD.

The Panel also reviewed the settlement documentation related to Occurrence Number 2083714, considered the amount of payment made to any party to the settlements, and considered other relevant terms and conditions of the settlements. The Panel noted that the settlements were not conditioned on any party to the settlements not opposing the expungement request and that Claimant contributed to the settlement amount. Claimant was required to contribute \$5,000.00 in Claimant's settlement with Respondent JMS only because his employment agreement contained a term and condition that all JMS financial advisors must contribute that amount to any settlement. That is a requirement imposed by Respondent JMS's errors and omissions insurance carrier.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Claimant's Statement of Claim; Respondents' respective Statements of Answer; the Motion for Expungement and exhibits attached; Respondents JMS and Kemp's counsel's representations about notice of the hearing to Claimant and his counsel; Respondent Kemp's current BrokerCheck® Report; Respondent Kemp's hearing testimony; Respondents JMS and Kemp's counsel's closing argument.

AWARD

After considering the pleadings, the testimony and evidence presented at the expungement 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 Occurrence Number 2083714 from registration records maintained by the CRD for Respondent Jeffrey Scott Kemp (CRD Number 2263257) with the understanding that, pursuant to Notice to Members 04-16, Respondent Kemp 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 13805 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.

The claim, allegation, or information is false.

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

Respondent Kemp’s Background and Employment

Respondent Kemp earned a degree in Business Administration in 1991. He began working as a financial advisor (“FA”) at Merrill Lynch in its Manhattan office and continued his employment with that firm at its Long Island branch. Respondent Kemp holds Series 7, 64, 65, and life insurance licenses. Respondent Kemp is currently employed as an FA with Respondent JMS at its branch office in Melville, New York. Respondent Kemp has been employed there since July 2015. Prior to JMS, Respondent Kemp also worked as an FA at Respondent Morgan Stanley (2007 to 2015) and Citigroup Global Markets Inc. (2001-2007). Respondent Kemp has approximately twenty-eight years working in the financial services industry. Moreover, Respondent Kemp has never had a complaint filed against him, nor has he been disciplined for any reason by a regulator or employer. In 2007, while at Citigroup, there was a customer complaint for alleged excessive trading. However, it turned out that Respondent Kemp never had any dealings with that person, resulting in the claim being disposed of with no compensation paid. Therefore, the present FINRA case is the only matter appearing on Respondent Kemp’s CRD records.

Over the years, Respondent Kemp’s work has reflected a conservative approach to investing in the market. Respondent Kemp does not handle discretionary trading accounts. He also generally is not involved with customers who trade on margin. In fact, Respondent Kemp’s current employer, JMS, is very strict about its customers purchasing securities on margin.

Claimant’s Action

In his Statement of Claim (“SOC”), Claimant alleged that he suffered losses due to the recommendations of Respondents JMS and Kemp to purchase high-risk, high-yield securities on margin, a strategy which increases investment risks. Respondent Kemp’s testimony, supported by very substantial documentary evidence, demonstrated that those allegations were factually impossible, clearly erroneous, and false. Rather, it was Claimant himself who implemented a strategy that he developed to purchase securities on margin. This strategy involved using the low margin interest rate so that he could buy high-yield securities and earn a profit from the spread between that rate and the securities.

Respondent Kemp’s testimony was very credible, and it was unchallenged because Claimant chose not to participate in the hearing. The hearing exhibits corroborated

Respondent Kemp's position that the Statement of Claim was grounded in false allegations lacking any factual basis. The vast majority of Claimant's purchases were accurately designated as "unsolicited." Respondent Kemp handled accounts for more than 200 customers, and almost none of those other customers bought the type of high-yield securities which Claimant falsely accused Respondent Kemp of recommending to him. Moreover, only a handful of Respondent Kemp's clients ever bought on margin. It is very noteworthy that Claimant was a follower of "Seeking Alpha," a securities research company. Seeking Alpha was a subscription service with no connection to Respondent Kemp or JMS. Additionally, Respondent Kemp submitted documentary proof that Claimant frequently accessed his accounts online, usually multiple times every day. Also, Claimant constantly called Respondent Kemp, sometimes multiple times a week, to discuss his investment ideas and strategy. Contrary to the allegations in the SOC, there was no evidence that Respondent Kemp or his firm solicited Claimant's business by offering highly-discounted commissions. In fact, the compensation Respondent Kemp received from Claimant's accounts over time was much less lucrative for Respondent Kemp than he earned with his other customers.

Claimant's strategy was profitable from mid-2015 until the beginning of 2020. Respondent Kemp periodically warned Claimant about the risks of Claimant's investment strategy. These warnings were documented in contemporaneous notes that Respondent Kemp entered into his company's system. Due to the unanticipated market decline starting in March 2020, directly resulting from the onset of the COVID pandemic, Claimant began receiving margin calls. These margin calls became frequent and triggered losses amounting to around \$182,000.00. Claimant's allegation that such losses were more than \$1.1 million dollars was incorrect.

Claimant's strategy to take advantage of low margin interest rates to purchase high-yielding securities was initiated while Respondent Kemp still was at Respondent Morgan Stanley. However, it related only to a single security, Seadrill Partners. Claimant bought and sold that investment several times at Morgan Stanley prior to making the purchases which are at the heart of this action. When Claimant moved his account to JMS, he transferred his Seadrill Partners positions to JMS and was satisfied with that investment. In fact, in September 2015 Claimant made additional unsolicited purchases at JMS of that security. Claimant's purchases of Seadrill Partners after he transferred his account to JMS were suitable and consistent with his investment objectives.

Conclusion

The allegations against Respondent Kemp are completely without any basis in fact. Respondent Kemp and his employers were wrongfully accused of recommending an investment strategy which Claimant himself had developed and implemented. Claimant relied at least in part on Seeking Alpha to guide how he invested and frequently accessed his accounts online. Both Morgan Stanley and JMS settled with Claimant solely for business reasons with no admission of wrongdoing in any way. Respondent Kemp was required to contribute \$5,000.00 to the JMS settlement. However, Respondent Kemp did this only because, under the terms and conditions of his employment agreement with JMS, the errors and omissions insurer required that Respondent Kemp do so. Thus, Respondent Kemp had to make that contribution to the settlement even though, as here, Claimant's allegations against Respondent Kemp and his firm were factually impossible, erroneous, and false.

2. Any and all claims for relief not specifically addressed herein 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 = \$ 2,000.00

*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 parties, Respondents Morgan Stanley and JMS were assessed the following:

For Respondent Morgan Stanley:

Member Surcharge = \$ 1,100.00

Member Process Fee = \$ 2,250.00

For Respondent JMS:

Member Surcharge = \$ 3,025.00

Member Process Fee = \$ 6,175.00

Hearing Session Fees and Assessments

The Arbitrator has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Arbitrator, including a pre-hearing conference with the Arbitrator, which lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session with a single Arbitrator @ \$450.00/session = \$ 450.00
Pre-Hearing Conference: March 5, 2021 1 session

One (1) pre-hearing session with the Panel @ \$1,400.00/session = \$ 1,400.00
Pre-Hearing Conference: November 10, 2020 1 session

One (1) hearing session on expungement request @ \$1,400.00/session = \$ 1,400.00
Hearing: October 26, 2021 1 session

Total Hearing Session Fees = \$ 3,250.00

Pursuant to the parties' agreement, the Arbitrator has assessed the total hearing session fees to Respondent JMS.

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

ARBITRATION PANEL

Martin A. Feigenbaum	-	Public Arbitrator, Presiding Chairperson
Lawrence S. Silver	-	Public Arbitrator
Marvin S. Lava	-	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

Martin A. Feigenbaum

Martin A. Feigenbaum
Public Arbitrator, Presiding Chairperson

11/08/2021

Signature Date

Lawrence S. Silver

Lawrence S. Silver
Public Arbitrator

11/08/2021

Signature Date

Marvin S. Lava

Marvin S. Lava
Public Arbitrator

11/08/2021

Signature Date

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November 08, 2021

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