

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Kathleen Olvany Riordan
MSSB C/F Kathleen Olvany Riordan

Case Number: 20-02466

vs.

Respondent

J. Powers Shepard

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: Customers vs. Associated Person

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimants Kathleen Olvany Riordan and MSSB C/F Kathleen Olvany Riordan: John Olvany, Power of Attorney, Wilmette, Illinois.

For Respondent J. Powers Shepard: Alejandro Schwed, Esq., Morgan Stanley, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: July 31, 2020.

Kathleen Olvany Riordan signed the Submission Agreement: July 31, 2020.

MSSB C/F Kathleen Olvany Riordan signed the Submission Agreement: July 31, 2020.

Statement of Answer filed by Respondent on or about: October 6, 2020.

J. Powers Shepard signed the Submission Agreement: October 8, 2020.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: unsuitability; and over-allocation. The causes of action relate to Claimants' investments in Alternative Investments ("Alternative Investments"), among other things.

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, Claimants requested: compensatory damages in the amount of \$400,000.00; restoration of the full principal of all the Alternative Investments; and cancellation of any future calls or obligations.

In the Statement of Answer, Respondent requested: dismissal of Claimants' Statement of Claim against Respondent in its entirety; costs and attorneys' fees; and such other and further relief as the Panel deemed fair, just and equitable.

OTHER ISSUES CONSIDERED AND DECIDED

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

On or about June 11, 2021, Claimants filed with FINRA Dispute Resolution Services a notice of settlement. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

On or about August 3, 2021, Respondent filed a Motion for Expungement, to which no response was filed.

On or about August 9, 2021, Claimants filed with FINRA Dispute Resolution Services a notice advising Claimants would not be participating in the expungement hearing.

On or about February 3, 2022, Respondent filed with FINRA Dispute Resolution Services a notice from Claimants dated January 31, 2022, advising Claimants would not be participating in the expungement hearing.

The Panel conducted a recorded, telephonic hearing on February 4, 2022, so the parties could present oral argument and evidence on Respondent's request for expungement.

Claimants did not participate in the expungement hearing. The Panel found that Claimants had notice of the expungement request and hearing.

The Panel reviewed Respondent'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 Central Registration Depository ("CRD").

The Panel also reviewed the settlement documentation related to the above-captioned arbitration (Occurrence Number 2079739), 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 Respondent did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Capital Forensics, Inc. Report – Annual P/(L) Summary – with Alternative Investment Allocation and Capital Forensics, Inc. Report – Alternative Investment Profit and Loss.

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 2079739) from registration records maintained by the CRD for Respondent J. Powers Shepard (CRD Number 1334664) with the understanding that, pursuant to Notice to Members 04-16, Respondent J. Powers Shepard 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.

The claim, allegation, or information is false.

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

The recommendations made by Respondent were shown to be suitable and appropriate, as was evidenced by Respondent’s testimony, combined with the documentary evidence submitted by Respondent.

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	= \$ 1,425.00
--------------------------	---------------

**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 the member firm that employed Respondent at the time of the events giving rise to the dispute, 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:

September 7, 2021, postponement requested by Respondent	= \$	1,125.00
---	------	----------

Total Postponement Fees	= \$	1,125.00
-------------------------	------	----------

The Panel has assessed the total postponement fees to Respondent.

Last-Minute Cancellation Fees

Fees apply when a hearing on the merits is cancelled within ten calendar days before the start of a scheduled hearing session:

September 7, 2021, cancellation requested by Respondent	= \$	1,800.00
---	------	----------

Total Last-Minute Cancellation Fees	= \$	1,800.00
-------------------------------------	------	----------

The Panel has assessed the total last-minute cancellation 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: December 11, 2020	1 session	
May 24, 2021	1 session	

One (1) hearing session on expungement request @ \$1,125.00/session	= \$	1,125.00
Hearing: February 4, 2022	1 session	

Total Hearing Session Fees	= \$	3,375.00
----------------------------	------	----------

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

The Panel has assessed \$1,687.50 of the hearing session fees to Respondent.

The hearing session fees in the amount of \$1,125.00 in connection with the May 24, 2021 pre-hearing conference were waived.

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

ARBITRATION PANEL

Robert Lawrence Ostrov	-	Public Arbitrator, Presiding Chairperson
Gloria O. North	-	Public Arbitrator
Virginia Lee Perez-Berry	-	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 Lawrence Ostrov

Robert Lawrence Ostrov
Public Arbitrator, Presiding Chairperson

02/08/2022

Signature Date

Gloria O. North

Gloria O. North
Public Arbitrator

02/08/2022

Signature Date

Virginia Lee Perez-Berry

Virginia Lee Perez-Berry
Public Arbitrator

02/08/2022

Signature Date

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.

February 08, 2022

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