

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

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In the Matter of the Arbitration Between:

Claimant  
Melinda Whitman

Case Number: 20-03416

vs.

Respondents  
Morgan Stanley  
Scott Danial Swaylik  
Morgan Stanley Bank, N.A.

Hearing Site: Boston, Massachusetts

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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: Customer vs. Member, Associated Person and Non-Member

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimant Melinda Whitman: William A. Haddad, Esq., Pasquarello Fink Haddad LLC, Boston, Massachusetts.

For Respondents Morgan Stanley, Scott Danial Swaylik (“Swaylik”), and Morgan Stanley Bank, N.A.: Jeremy Winer, Esq., Morgan Stanley, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: October 1, 2020.

Melinda Whitman signed the Submission Agreement: September 30, 2020.

Joint Statement of Answer filed by Respondents Morgan Stanley and Swaylik on or about: December 18, 2020.

Morgan Stanley signed the Submission Agreement: December 18, 2020.

Scott Danial Swaylik signed the Submission Agreement: December 18, 2020.

Morgan Stanley Bank, N.A. did not submit a Statement of Answer nor sign the Submission Agreement.

### **CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action: breach of fiduciary duty; violation of FINRA Rule 2111 – suitability, FINRA Rule 2010 – high standards of commercial honor, FINRA Rule 3110 – failure to supervise, and M.G.L. c. 93A, s. 9 – unfair and deceptive business practices; common law fraud; negligent misrepresentation; common law negligent supervision; respondeat superior; and vicarious liability. The causes of action relate to unspecified securities.

Unless specifically admitted in the Statement of Answer, Respondents Morgan Stanley and Swaylik 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 for losses due to unsuitable and inappropriate investment recommendations and selections in an amount to be determined at hearing; compensatory damages for the harm caused by Respondents' recommendations and endorsements of the patently inappropriate securities-backed loan products; attorney's fees, multiple damages pursuant to M.G.L. c. 93A; punitive damages; interest and costs; and judgment in Claimant's favor on all counts.

In the Statement of Answer, Respondents requested that the Statement of Claim be denied in its entirety; expungement of this matter from Respondent Swaylik's CRD records; and costs.

At the hearing, Claimant requested compensatory damages in the amount of \$1,716,211.48.

### **OTHER ISSUES CONSIDERED AND DECIDED**

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

On November 9, 2020, Claimant filed a notice of withdrawal without prejudice of her claims against Morgan Stanley Bank, N.A.

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. Respondents Morgan Stanley and Swaylik are jointly and severally liable for and shall pay to Claimant the sum of \$150,000.00 in compensatory damages.
2. Scott Daniel Swaylik's (CRD Number 2936324) request for expungement of the above-captioned arbitration (Occurrence Number 2065327) 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, multiple 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
Expungement 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 that employed the associated person at the time of the event giving rise to the dispute. Accordingly, as a party, Respondent Morgan Stanley Smith Barney LLC is assessed the following:

Member Surcharge	=\$	1,900.00
Member Process Fee	=\$	3,750.00

**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 Arbitrators, including a pre-hearing conference with the Arbitrators, 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: July 23, 2021		1 session
Two (2) pre-hearing sessions with the Panel @ \$1,125.00/session	=\$	2,250.00
Pre-Hearing Conferences: February 1, 2021		1 session
September 13, 2021		1 session
Eight (8) hearing sessions @ \$1,125.00/session	=\$	9,000.00
Hearings: January 18, 2022		2 sessions
January 19, 2022		2 sessions
January 20, 2022		2 sessions
January 21, 2022		2 sessions
<b>Total Hearing Session Fees</b>	<b>=\$</b>	<b>11,700.00</b>

The Panel has assessed \$5,850.00 of the hearing session fees to Claimant.

The Panel has assessed \$5,850.00 of the hearing session fees jointly and severally to Respondents Morgan Stanley and Swaylik.

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

**ARBITRATION PANEL**

Michael P. Breton	-	Public Arbitrator, Presiding Chairperson
Paul Gregory Smith	-	Public Arbitrator
John George Neylon, Sr.	-	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**

***Michael P. Breton***

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Michael P. Breton  
Public Arbitrator, Presiding Chairperson

***01/31/2022***

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

***Paul Gregory Smith***

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Paul Gregory Smith  
Public Arbitrator

***01/31/2022***

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

***John George Neylon, Sr.***

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John George Neylon, Sr.  
Public Arbitrator

***01/31/2022***

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

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February 01, 2022

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