

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Lisbeth S. Brod

Case Number: 21-00429

vs.

Respondent
Morgan Stanley

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. Member

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Lisbeth S. Brod: Edward H. Glenn, Jr., Esq., Zamansky LLC, New York, New York.

For Respondent Morgan Stanley: Christopher M. Sacco, Esq., Morgan Stanley, St. Petersburg, Florida.

*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: February 17, 2021.

Lisbeth S. Brod signed the Submission Agreement: February 17, 2021.

Statement of Answer filed by Respondent on or about: April 30, 2021.

Morgan Stanley signed the Submission Agreement: March 3, 2021.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: securities fraud; common law fraud; fraudulent misrepresentation and omission; unsuitability; equitable rescission; breach of fiduciary duty; breach of contract; negligence; and failure to supervise in violation of federal securities laws, FINRA Rules, Florida state securities laws (§517, et seq.) and applicable common law. The causes of action relate to the sale of stocks that were tied to loans in Claimant's account.

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: equitable restoration of her stocks that were sold or compensatory damages of approximately \$200,000.00, plus interest; "well-managed account" damages; recovery of all costs, attorneys' fees, expert fees and forum fees for this arbitration; and punitive damages in an amount sufficient to punish and deter any future misconduct by Respondent.

In the Statement of Answer, Respondent requested: denial of Claimant's claim in its entirety with prejudice; an assessment of all forum costs against Claimant; a recommendation of expungement of this claim from Unnamed Party Lawrence S. Miller's Central Registration Depository ("CRD") records; and such other and further relief as the Panel deemed just and appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

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

On December 6, 2021, Claimant filed 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 December 17, 2021, Respondent filed a Motion for Expungement on behalf of Unnamed Party Lawrence S. Miller, to which no response was filed.

The Panel conducted a recorded hearing by videoconference on January 19, 2022, so the parties could present oral argument and evidence on Respondent's request for expungement. Claimant and her counsel did not participate in the expungement hearing.

The Panel reviewed Unnamed Party Lawrence S. Miller'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 Unnamed Party Lawrence S. Miller did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Unnamed Party Lawrence S. Miller's testimony; Claimant's emails; Claimant's credit line application, credit line terms and conditions, the Federal Reserve's statement of purpose; Claimant's monthly statements; and Respondent's notes.

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 2117185) from registration records maintained by the CRD for Unnamed Party Lawrence S. Miller (CRD Number 1016147) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Lawrence S. Miller 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 finding of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

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

The Panel considered Mr. Miller's testimony as well as the following documentary evidence in making its ruling: customer emails, credit line application, credit line terms and conditions, federal reserve's statement of purpose, monthly statements and Respondent's notes. We find that Mr. Miller was only marginally involved with the loan and that the customer was aware that only her taxable account was used to collateralize her loan. We therefore recommend expungement.

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

= \$ 1,425.00

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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Respondent Morgan Stanley is assessed the following:

Member Surcharge = \$ 1,700.00

Member Process Fee = \$ 3,250.00

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 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: June 16, 2021 1 session

One (1) hearing session on expungement request @ \$1,125.00/session = \$ 1,125.00

Hearing: January 19, 2022 1 session

Total Hearing Session Fees = \$ 2,250.00

The Panel has assessed \$562.50 of the hearing session fees to Claimant.

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

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

ARBITRATION PANEL

Paul J. Burkhart	-	Public Arbitrator, Presiding Chairperson
Stephanie Jeannette Charny	-	Public Arbitrator
Victor Bernard Gent	-	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

Paul J. Burkhart

Paul J. Burkhart
Public Arbitrator, Presiding Chairperson

01/27/2022

Signature Date

Stephanie Jeannette Charny

Stephanie Jeannette Charny
Public Arbitrator

01/31/2022

Signature Date

Victor Bernard Gent

Victor Bernard Gent
Public Arbitrator

01/26/2022

Signature Date

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January 31, 2022

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