

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Morgan Stanley Smith Barney
Morgan Stanley Smith Barney Financing, LLC

Case Number: 21-00583

vs.

Respondent

Thomas James Hagan

Hearing Site: Tampa, 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: Member and Non-Member vs. Associated Person

REPRESENTATION OF PARTIES

For Claimants Morgan Stanley Smith Barney (“MSSB”) and Morgan Stanley Smith Barney Financing, LLC (“MSSBF”): Elio F. Martinez, Jr., Esq., GrayRobinson, PA, Miami, Florida.

Respondent Thomas James Hagan did not appear.

CASE INFORMATION

Statement of Claim filed on or about: March 2, 2021.

Amended Statement of Claim filed on or about: April 27, 2021.

MSSB signed the Submission Agreement: March 3, 2021.

MSSBF signed the Submission Agreement: May 4, 2021.

Respondent did not file a Statement of Answer or sign the Submission Agreement.

CASE SUMMARY

In the Statement of Claim, Claimants asserted a cause of action for breach of promissory note in connection with four fully-executed promissory notes respectively dated November 6, 2015 (“Note 1”), December 15, 2015 (“Note 2”), March 11, 2016 (“Note 3”) and February 21, 2017 (“Note 4”).

RELIEF REQUESTED

In the Statement of Claim, Claimants requested: on Note 1, the outstanding principal amount of

\$371,240.40, plus pre-award interest at the rate of 1.75%, or \$16.80 per day, from November 6, 2020 to January 11, 2021, and at the rate of 5.75%, or \$58.48 per day, from January 11, 2021 to the date of Award, plus post-award interest at the legal rate; on Note 2, in the outstanding principal amount of \$53,554.45, plus pre-award interest at the rate of 1.75%, or \$2.36 per day, from December 15, 2020 to January 11, 2021, and at the rate of 5.75%, or \$8.44 per day, from January 11, 2021 to the date of award, plus post-award interest at the legal rate; on Note 3, in the outstanding principal amount of \$69,736.59, plus pre-award interest at the rate of 1.50%, or \$2.70 per day, from March 11, 2020 to January 11, 2021, and at the rate of 5.50%, or \$10.51 per day, from January 11, 2021 to the date of award, plus post-award interest at the legal rate; on Note 4, in the outstanding principal amount of \$83,030.10, plus pre-award interest at the rate of 2.25%, or \$5.12 per day, from February 21, 2020 to January 11, 2021 and at the rate of 6.25%, or \$14.22 per day, from January 11, 2021 to the date of award, plus post-award interest at the legal rate; post-award interest on all of the Notes at the Florida statutory rate to the date of payment; fees and expenses, including all FINRA forum fees and the FINRA filing fee of \$2,550.00 and member surcharge of \$2,475.00; reasonable attorneys' fees, as provided in the Notes; and such other and further relief as the Arbitrator deems appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

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

On or about April 27, 2021, and prior to the appointment of the Arbitrator in this matter, Claimant MSSB filed a Notice of Note Assignment and Additional Party Claimant for the purpose of amending the Statement of Claim to add Morgan Stanley Smith Barney Financing, LLC as an additional Claimant in this matter pursuant to the assignment of the Notes by Claimant MSSB to Claimant MSSBF.

Respondent Thomas James Hagan did not file a Statement of Answer. Accordingly, this matter proceeded pursuant to Rule 13806 of the Code of Arbitration Procedure ("Code").

The Arbitrator determined that Respondent Thomas James Hagan was served with the Claim Notification letter dated March 4, 2021, the Overdue Notice (including the Statement of Claim) dated April 27, 2021, and Notification of Arbitrator dated May 25, 2021 by regular mail, none of which was returned by the post office to FINRA Dispute Resolution Services.

The Claim Notification letter notified Respondent Thomas James Hagan that FINRA rules require parties to use the online DR Portal on a mandatory basis (except pro se investors) and that failure to register for the DR Portal will prevent the submission of pleadings, selection of arbitrators, and receipt of notification relating to case information and deadlines. Respondent Thomas James Hagan failed to register for the DR Portal.

The Arbitrator determined that Respondent Thomas James Hagan is, therefore, bound by the Arbitrator's ruling and determination.

AWARD

After considering the pleadings, the Arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable for and shall pay to Claimants compensatory damages and interest on each Note as follows:
 - Note 1: \$371,240.40 representing the principal balance due, plus interest to January 11, 2021 in the amount of \$1,108.80, plus interest from January 11, 2021 through May 27, 2021 in the amount of \$7,953.70, plus per diem interest in the amount of \$58.48/day from May 28, 2021 until the date of service of the Award, plus post Award interest at the Florida statutory rate from the date of service of the Award until the Award is paid in full.
 - Note 2: \$53,554.45 representing the principal balance due, plus interest to January 11, 2021 in the amount of \$63.79, plus interest from January 11, 2021 through May 27, 2021 in the amount of \$1,147.39, plus per diem interest in the amount of \$8.44/day from May 28, 2021 until the date of service of the Award, plus post Award interest at the Florida statutory rate from the date of service of the Award until the Award is paid in full.
 - Note 3: \$69,736.59 representing the principal balance due, plus interest to January 11, 2021 in the amount of \$826.20, plus interest from January 11, 2021 through May 27, 2021 in the amount of \$1,429.12, plus per diem interest in the amount of \$10.51/day from May 28, 2021 until the date of service of the Award, plus post Award interest at the Florida statutory rate from the date of service of the Award until the Award is paid in full.
 - Note 4: \$83,030.10 representing the principal balance due, plus interest to January 11, 2021 in the amount of \$1,663.45, plus interest from January 11, 2021 through May 27, 2021 in the amount of \$1,933.58, plus per diem interest in the amount of \$14.22/day from May 28, 2021 until the date of service of the Award, plus post Award interest at the Florida statutory rate from the date of service of the Award until the Award is paid in full.
2. Pursuant to the terms of the Notes, Respondent is liable for and shall pay to Claimants the sum of \$6,332.00 in attorneys' fees.
3. Respondent is liable for and shall pay to Claimants \$1,250.00 to reimburse Claimants for the non-refundable portion of the filing fee previously paid by Claimant MSSB to FINRA Dispute Resolution Services.
4. Respondent is liable for and shall pay to Claimants \$300.00 to reimburse Claimants for the Paper Decision Fee previously paid by Claimant MSSB to FINRA Dispute Resolution Services.
5. Any and all claims for relief not specifically addressed herein are denied.

FEES

Pursuant to the Code, Claimant MSSB has paid to FINRA Dispute Resolution Services the \$2,475.00 Member Surcharge and \$5,075.00 Member Process Fee previously invoiced.

Claimant MSSB has also paid to FINRA Dispute Resolution Services the \$1,250.00 non-refundable portion of the filing fee and the \$300.00 Paper Decision Fee.

ARBITRATOR

Kenneth R. Starr

-

Sole 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.

Arbitrator's Signature

Kenneth R. Starr

Kenneth R. Starr
Sole Public Arbitrator

06/10/2021

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.

June 10, 2021

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