

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Patricia A. Gremore

Case Number: 21-01955

vs.

Respondents
A.G. Edwards & Sons, Inc. n/k/a
Wells Fargo Advisors Financial Network,
Morgan Stanley DW Inc.,
Morgan Stanley & Co., LLC,
Morgan Stanley Smith Barney, LLC, and
Invesco Distributors, Inc.

Hearing Site: Milwaukee, Wisconsin

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

This case was administered under the Special Proceeding option for simplified cases.

REPRESENTATION OF PARTIES

Claimant Patricia A. Gremore (“Claimant”) appeared pro se.

For Respondents A.G. Edwards & Sons, Inc. (“A.G. Edwards”) and Wells Fargo Advisors Financial Network (“Wells Fargo”), hereinafter, collectively referred to as “Wells Fargo Respondents”: Jeffrey D. Rodgers, Jr., Esq., Wells Fargo, St. Louis, Missouri.

For Respondents Morgan Stanley DW Inc. (“Morgan Stanley DW”), Morgan Stanley & Co., LLC (“Morgan Stanley & Co.”), Morgan Stanley Smith Barney, LLC (“Morgan Stanley”), hereinafter, collectively referred to as “Morgan Stanley Respondents”: Amanda Parisi, Esq., Morgan Stanley Wealth Management, New York, New York.

For Respondent Invesco Distributors, Inc. (“Invesco”): Anne Gerry, Esq., Invesco, Atlanta, Georgia.

CASE INFORMATION

Statement of Claim filed on or about: August 1, 2021.

Amended Statement of Claim filed on or about: September 1, 2021.

Second Amended Statement of Claim filed on or about: September 15, 2021.

Claimant signed the Submission Agreement: July 30, 2021.

Statement of Answer filed by Wells Fargo Respondents on or about: October 22, 2021.
Wells Fargo Respondents signed the Submission Agreement: October 22, 2021.

Statement of Answer filed by Morgan Stanley Respondents on or about: October 22, 2021.
Morgan Stanley DW and Morgan Stanley & Co. signed the Submission Agreement: October 26, 2021.
Morgan Stanley signed the Submission Agreement: October 22, 2021.

Statement of Answer filed by Invesco on or about: October 20, 2021.
Invesco did not file a properly executed Submission Agreement.

CASE SUMMARY

In the Statement of Claim, as amended, Claimant asserted that in 1997, A.G. Edwards n/k/a Wells Fargo failed to transfer her 224.605 shares of AIM Equity Funds Inc. Weingarten Fund-Class A to Invesco and later, Invesco failed to transfer the shares to Morgan Stanley DW.

Unless specifically admitted in the Statement of Answer, Wells Fargo Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in the Statement of Answer, Morgan Stanley Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in the Statement of Answer, Invesco denied the allegations made in the Statement of Claim.

RELIEF REQUESTED

In the Statement of Claim, as amended, Claimant requested a total of \$30,589.86 in damages.

In the Statement of Answer, Wells Fargo Respondents requested that the Arbitrator dismiss the Statement of Claim in its entirety and with prejudice, award Wells Fargo Respondents costs and expenses, and such other and further relief as is just and proper.

In the Statement of Answer, Morgan Stanley Respondents requested that the Statement of Claim be denied in its entirety and that they be awarded costs.

In the Statement of Answer, Invesco requested that an award be entered in its favor.

OTHER ISSUES CONSIDERED AND DECIDED

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

Invesco did not file a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and, having answered the claim and appeared, is bound by the determination of the Arbitrator on all issues submitted.

On October 26, 2021, Wells Fargo Respondents filed a Motion to Dismiss the Statement of Claim (“Wells Fargo Respondents’ Motion to Dismiss”) pursuant to Rule 12206 of the Code. On October 27, 2021, Morgan Stanley Respondents filed a Motion to Dismiss the Statement of Claim pursuant to Rule 12206 (“Morgan Stanley Respondents’ Motion to Dismiss”). On November 26, 2021, Claimant filed a response opposing both Motions to Dismiss. On November 29, 2021, Morgan Stanley Respondents filed a Reply Brief in Further Support of its Motion to Dismiss.

On January 10, 2022, Invesco filed a Motion to Dismiss the Statement of Claim (“Invesco’s Motion to Dismiss”) (collectively, with Wells Fargo Respondents’ Motion to Dismiss and Morgan Stanley Respondents’ Motion to Dismiss, “Motions to Dismiss”) pursuant to Rule 12206. On January 18, 2022, Claimant filed a response opposing Invesco’s Motion to Dismiss.

On February 15, 2022, the Arbitrator heard oral arguments on the Motions to Dismiss. Herein, the Arbitrator grants the Motions to Dismiss on the following grounds:

The first “occurrence or event” is the purchase date, transaction date, etc. In the Statement of Claim, as amended, Claimant asserts a transaction in which 224,605 shares of AIM Equity Funds, Inc. Weingarten Fund Class A shares were not transferred from Wells Fargo Respondents to Morgan Stanley Respondents in August 1997. That would put the outside date for a failure to transfer/negligence claim to sometime in 2003. Events from 1997 are outside the six-year timeframe proscribed by Rule 12206.

A second “occurrence or event” occurred 9 months later, when Claimant recalls contacting Morgan Stanley Respondents in 1998, when she noticed the reduction in total value of the transferred account from a previous statement. At that time, she was told that the reduction in value was due to the equity decreases in the market. Apparently, that was a misrepresentation of fact. Claimant did not find the problem. But Claimant did have all of the statements. The loss would have shown if the statements were reviewed, because the Weingarten shares could not be present on the Dean Witter/Morgan Stanley statements. Although some effort would have been required, the loss would have been discovered by Claimant if the statements were examined or she had sought some help from the respondents or her own advisors in finding the source of the loss, the missing transfer.

The problem in this case is Claimant not doing anything except making the telephone call once she received a statement showing a loss, nine months after the 1997 transfer.

Claimant argues a continuing occurrence, but her Statement of Claim does not assert anymore contacts with the brokers from 1998 until November 2018. That is 20-years after the last purported misrepresentation.

Assuming there was a misrepresentation in 1998, Claimant had six years to discover the misrepresentation by reviewing her account statements. That would put the outside date for a misrepresentation claim to sometime in 2004. Events from 1998 are outside the six-year timeframe proscribed by Rule 12206.

Claimant further contends that there was a fiduciary relationship to transfer accounts correctly. The Arbitrator assumed for purposes of this motion that she is correct. Under

Wisconsin law, the limitations for fiduciary duty claim begins to run at the end of fiduciary relationship. For Wells Fargo Respondents, that would be 1997 plus at most six years. For Morgan Stanley Respondents that would be 2003 plus at most six years. The latest possible claim for breach of fiduciary duty would be 2009. Here the claim was not filed until July 2021. The breach of fiduciary duty claim is outside the six-year timeframe proscribed by rule 12206.

FINRA Rule 12206 time-bars all of the claims in Claimant’s Statement of Claim. Claimant waited too long to investigate and file her claim.

While there are strong public policies disfavoring the loss of Claimant’s retirement funds, too many years (decades) have passed without action.

The Motions to Dismiss pursuant to Rule 12206 of the Code are granted by the Arbitrator without prejudice to any right Claimant has to file in court; Claimant is not prohibited from pursuing her claims in court pursuant to Rule 12206(b) of the Code.

AWARD

After considering the pleadings, the Motions to Dismiss and all responses thereto, and the arguments presented at the pre-hearing conference on February 15, 2022, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant’s claims are dismissed pursuant to Rule 12206 of the Code.
2. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, treble damages, and attorneys’ fees, 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 = \$ 600.00

**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, Wells Fargo Respondents, Morgan Stanley Respondents, and Invesco are each assessed the following:

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

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:

| | | | |
|---|-----------|------|--------|
| Two (2) pre-hearing sessions @ \$450.00/session | | = \$ | 900.00 |
| Pre-Hearing Conferences: January 5, 2022 | 1 session | | |
| February 15, 2022 | 1 session | | |
| <hr/> | | | |
| Total Hearing Session Fees | | = \$ | 900.00 |

The Arbitrator has assessed \$225.00 of the hearing session fees to Claimant.

The Arbitrator has assessed \$675.00 of the hearing session fees jointly and severally to Wells Fargo Respondents, Morgan Stanley Respondents, and Invesco.

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

ARBITRATOR

Kevin J. Demet

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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

Kevin J. Demet

Kevin J. Demet
Sole Public Arbitrator

03/01/2022

Signature Date

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March 01, 2022

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