

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Roger Roach

Case Number: 21-02242

vs.

Respondents
Noah J. Caruso
Morgan Stanley Smith Barney LLC

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 and Associated Person

This matter proceeded pursuant to Rule 12800 of the Code of Arbitration Procedure (“Code”).

REPRESENTATION OF PARTIES

For Claimant Roger Roach: William A. Haddad, Esq., Pasquarello Fink Haddad LLC, Boston, Massachusetts.

For Respondents Noah J. Caruso (“Caruso”) and Morgan Stanley Smith Barney LLC (“MSSB”): Amanda L. Parisi, Esq., Morgan Stanley, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: August 31, 2021.
Roger Roach signed the Submission Agreement: August 31, 2021.

Statement of Answer filed by Respondents on or about: November 17, 2021.
Noah J. Caruso signed the Submission Agreement: November 15, 2021.
Morgan Stanley Smith Barney LLC signed the Submission Agreement: November 17, 2021.

Claimant’s Response to Respondents’ Answer filed on or about: December 13, 2021.
Respondents’ Reply to Claimant’s Response to Respondents’ Answer filed on or about: December 31, 2021.

CASE SUMMARY

In the Statement of Claim and Response to Statement of Answer, Claimant asserted the following causes of action: breach of fiduciary duty; unsuitability in violation of FINRA Rule 2111; failure to supervise in violation of FINRA Rule 3110; common law fraud; and negligent misrepresentation. The causes of action relate to Claimant's investment in Advanced Micro Devices Inc. as well as the conversion of Claimant's account from a traditional brokerage account to an advisory account.

Unless specifically admitted in their Statement of Answer and Reply to Response to Statement of Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim and Response to the Statement of Answer, Claimant requested: judgment in his favor on all counts; compensatory damages in the amount of \$50,000.00; interest; costs; and reasonable attorneys' fees.

In the Statement of Answer and Reply to Response to Statement of Answer, Respondents requested: denial of the Statement of Claim in its entirety; expungement of this matter from Respondent Caruso's Central Registration Depository ("CRD") record; and an award of costs.

OTHER ISSUES CONSIDERED AND DECIDED

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

The Arbitrator conducted a recorded telephonic hearing on February 7, 2022, so the parties could present oral argument and evidence on Respondent Caruso's request for expungement.

Claimant participated in the expungement hearing and opposed the request for expungement.

The Arbitrator reviewed Respondent Caruso's BrokerCheck® Report. The Arbitrator noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrences in the CRD.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Respondent Caruso's testimony, Claimant's account statements, the Morgan Stanley Single Advisory Contract, account confirmation letter and document, account summaries and reports, and Respondent Caruso's notes.

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. Claimant's claims are denied in their entirety.

2. FINRA Dispute Resolution Services shall retain the \$600.00 filing fee that Claimant deposited previously.
3. The Arbitrator recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2124104) from registration records maintained by the CRD for Respondent Caruso (CRD Number 3138196) with the understanding that, pursuant to Notice to Members 04-16, Respondent Caruso 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, the Arbitrator has made the following Rule 2080 affirmative finding of fact:

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

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

The allegation that Claimant did not understand the difference in fees between a brokerage account and an advisory account is erroneous in light of documentary evidence (Claimant's account statements, single advisory contract signed by Claimant, account confirmation, account summaries and reports prepared for Claimant by Respondents) as well as the clear testimony of Respondent Caruso supported by Respondent Caruso's notes. Claimant is a high net worth individual who at various times held as many as six accounts with differing fee structures, including other advisory fee based accounts as well as multiple brokerage accounts. Respondent Caruso was unshakeable in his testimony that Claimant understood the difference between the types of fees associated with each account. Claimant based this not merely on his phone interactions with Claimant, but also upon his in-person meeting with Claimant as well as the documentation signed by Claimant. Furthermore, the assertion it was a breach of fiduciary duty to convert this account from a commission-based brokerage account to a fee-based advisory account is clearly erroneous in light of the recommendation to diversify. Claimant's account held a heavy concentration in one stock and given Claimant's age and market uncertainty, Respondent Caruso was recommending diversification. Respondent Caruso stated he "met with Claimant and went over all the reports.... I showed him and stressed the risk We both agreed we will sell it (referring to the AMD shares)." Given the fees associated with selling off the high concentration, Respondent Caruso explained it was "much more economical to convert to the advisory account." Although Claimant did sell a small portion of the AMD shares, and discussions continued between Claimant and Respondent Caruso, Claimant did not sell the bulk of his shares. Respondent Caruso testified that although Claimant showed hesitancy "to pull the plug" when it came time to actually sell the AMD shares, "Claimant never said he was never going to sell" but rather, he was "just not ready on this day." Respondent Caruso explained it was not uncommon to have to work with clients attached to certain large holdings for some time before they would finally follow through with an agreed upon diversification. Finally, the allegation that the financial advisor collected fees for doing nothing is clearly erroneous and is contradicted by the detailed testimony of Respondent Caruso concerning his advice and

recommendations, as supported by the documentary evidence of his contemporaneous notes of contact and interaction.

4. 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:

1. Respondent MSSB has paid to FINRA Dispute Resolution Services the \$750.00 Member Surcharge and \$1,750.00 Member Process Fee previously invoiced.
2. The Arbitrator has assessed \$1,150.00 jointly and severally to Respondents for the single expungement hearing session conducted on February 7, 2022.

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

ARBITRATOR

Leslie L. Cooney

-

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

Leslie L. Cooney

Leslie L. Cooney
Sole Public Arbitrator

02/11/2022

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 11, 2022

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