

**Award
FINRA Dispute Resolution**

In the Matter of the Arbitration Between:

Claimants

Jessica Clarke
Jessica Clarke, IRA

Case Number: 12-00159

vs.

Respondents

Morgan Stanley & Co., LLC
Morgan Stanley Smith Barney
Fred Eugene Brister III
Hilary Joseph Zimmerman
Steven Mark Wyatt

Hearing Site: Jackson, Mississippi

Nature of the Dispute: Customers vs. Members and Associated Persons

This case was decided by a majority-public panel.

REPRESENTATION OF PARTIES

For Claimants Jessica Clarke ("Clarke") and Jessica Clarke, IRA (the "IRA"), hereinafter collectively referred to as "Claimants": Joseph Peiffer, Esq., Judson Lee, Esq. and Kim Breese, Esq., Peiffer, Rosca, Abdullah & Kane, New Orleans, Louisiana.

For Respondents Morgan Stanley & Co., LLC (MS&Co.), Morgan Stanley Smith Barney ("Morgan Stanley"), Fred Eugene Brister III ("Brister"), Hilary Joseph Zimmerman ("Zimmerman") and, until April 21, 2014, Steven Mark Wyatt ("Wyatt"), hereinafter collectively referred to as the "Respondents": Joseph C. Coates, III, Esq., Greenberg Traurig, P.A., West Palm Beach, Florida.

For Respondent Wyatt, after April 21, 2014: George C. Freeman, III, Esq., Barrasso, Usdin, Kupperman, Freeman & Sarver, New Orleans, Louisiana.

CASE INFORMATION

Statement of Claim filed by Claimants on or about: January 10, 2012.
Jessica Clarke signed the Submission Agreement: January 3, 2012.
Jessica Clarke, IRA signed the Submission Agreement: January 3, 2012.

Statement of Answer filed jointly by Respondents on or about: March 30, 2012.
MS&Co. signed the Submission Agreement: March 30, 2012.
Morgan Stanley signed the Submission Agreement: March 30, 2012.
Respondent Brister signed the Submission Agreement: March 29, 2012.
Respondent Zimmerman signed the Submission Agreement: March 29, 2012.
Respondent Wyatt signed the Submission Agreement: March 29, 2012.

Motion to Re-Examine Respondent Wyatt under Oath filed by Claimants on or about: March 13, 2014.

Objection to Claimants' Motion to Re-Examine Respondent Wyatt under Oath filed by Respondents on or about: March 24, 2014.

Reply to Respondents' Objection to Claimants' Motion to Re-Examine Respondent Wyatt under Oath filed by Claimants on or about: March 28, 2014.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: unsuitability, unauthorized and excessive trading, churning, manipulative and deceptive practices, violations of SEC Rule 10b-5, fraud, common law negligence and violation of FINRA rules and industry requirements for supervision. The causes of action relate to Respondents Brister, Zimmerman and Wyatt's alleged mishandling of Claimants' Custom Portfolio discretionary and non-discretionary brokerage accounts.

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

RELIEF REQUESTED

In the Statement of Claim, Claimants requested: compensatory and rescissionary damages in the amount of at least \$1,000,000.01, plus interest; punitive damages; attorneys' fees; and costs.

In the Statement of Answer, Respondents requested: denial of Claimants' claims in their entirety; costs; and a recommendation of expungement of this matter from Respondents Brister, Zimmerman and Wyatt's Central Registration Depository ("CRD") records.

OTHER ISSUES CONSIDERED AND DECIDED

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

On or about March 13, 2014, Claimants filed a Motion to Re-Examine Respondent Wyatt under Oath. In the Motion, Claimants asserted that new documents received during the discovery process reflected that Respondent Wyatt had lied during prior testimony. Respondents responded that this Motion was another unjustified attempt by Claimants to needlessly prolong Respondent Wyatt's testimony. Respondents further argued that the documents which prompted this Motion were received through a discovery Order from a different Chairperson in a different arbitration proceeding, and for which the Chairperson in the above-captioned matter denied the request for production. Claimants replied that they would limit the re-examination of Respondent Wyatt to three (3) specific topics: 1) Respondent Wyatt's 2008 sales of Oculus and Valence, two (2) securities at issue in Claimants' accounts; 2) Respondent Wyatt's tolling agreement with Respondent Morgan Stanley; and 3) Respondent Wyatt's pattern of ATM cash withdrawals from his personal accounts, as it relates to Respondents

MS&Co. and Morgan Stanley's supervisory oversight. On or about April 7, 2014, the Panel issued an Order which granted Claimants' Motion.

During the April 9-11, 2014, evidentiary hearings, Respondent Wyatt did not pursue his request for expungement previously submitted in the Statement of Answer. Accordingly, the Panel made no determination with respect to Respondent Wyatt's request for expungement.

The Panel conducted a recorded telephonic hearing on April 28, 2014, so the parties could present oral argument on Respondents Brister and Zimmerman's respective requests for expungement set forth in the Statement of Answer and reasserted during the April 9-11, 2014, evidentiary hearings. Claimants and Claimants' counsel attended the hearing and objected to Respondents Brister and Zimmerman's requests for expungement.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Morgan Stanley, MS&Co. and Wyatt are found jointly and severally liable and shall pay to Claimants compensatory damages in the amount of \$150,000.00, plus interest at the rate allowed under Mississippi law, from the date of this Award until full payment.
2. Respondents Morgan Stanley, MS&Co. and Wyatt shall pay to Claimants the sum of \$600.00 representing reimbursement of the non-refundable portion of the filing fee, previously paid by Claimants to FINRA Dispute Resolution.
3. Respondent Brister's request for expungement is hereby denied.
4. The Panel recommends the expungement of all references to the above-captioned arbitration from Respondent Zimmerman's (CRD # 2191841) registration records maintained by the CRD, with the understanding that pursuant to Notice to Members 04-16, Respondent Zimmerman 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 (the "Code"), the Panel has made the following Rule 2080 affirmative findings of fact as to Respondent Zimmerman:

The claim, allegation, or information is factually impossible or clearly erroneous; and

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

The Panel has made the above Rule 2080 findings based on the following reasons as to Respondent Zimmerman:

The proof demonstrated that Respondent Zimmerman was not involved in managing Claimants' accounts and was not guilty of any trade practice, or supervisory wrongdoing or misconduct alleged by Claimants. Specifically, the testimony was that Claimants never communicated with Respondent Zimmerman about Claimants' accounts and Respondent Zimmerman did not testify at the hearing at all. Therefore, Respondent Zimmerman's request for expungement is granted pursuant to FINRA Rule 2080(b)(1)(A) and (B). The Panel does not make any ruling on FINRA Rule 2080(b)(1)(C) as it is unnecessary.

In making the above finding, the Panel considered the evidence presented during the recorded in-person evidentiary hearings, the recorded telephonic hearing, and the arguments of counsel for Claimants and Respondents Zimmerman and Brister. The Panel further relied upon the submissions of both counsel on the issue of expungement.

5. Any and all relief not specifically addressed herein, including Claimants' request for attorneys' fees and punitive damages, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

FINRA Dispute Resolution assessed a filing fee* for each claim:

Initial Claim Filing Fee	= \$ 1,800.00
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*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, Respondents Morgan Stanley and MS&Co. are assessed the following:

For Morgan Stanley:

Member Surcharge	= \$ 2,800.00
Pre-Hearing Processing Fee	= \$ 750.00
Hearing Processing Fee	= \$ 5,000.00

For MS&Co.:

Member Surcharge	= \$ 2,800.00
Pre-Hearing Processing Fee	= \$ 750.00
Hearing Processing Fee	= \$ 5,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

October 25, 2013, adjournment by the parties = \$ 1,200.00

The Panel has assessed the total adjournment fees of \$1,200.00 to Respondents Morgan Stanley, MS&Co. and Wyatt, jointly and severally.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

October 25, 2013, adjournment by the parties = \$ 300.00

The Panel has assessed the total three-day cancellation fees of \$300.00 to Respondents Morgan Stanley, MS&Co. and Wyatt, jointly and severally.

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), that 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: March 27, 2013 1 session

One (1) Pre-hearing session with the Panel @ \$1,200.00/session = \$ 1,200.00
Pre-hearing conference: April 3, 2014 1 session

Eighteen (18) Hearing sessions @ \$1,200.00/session = \$21,600.00
Hearing Dates: April 30, 2013 2 sessions
May 1, 2013 2 sessions
May 2, 2013 2 sessions
May 3, 2013 1 session
October 21, 2013 1 session
October 22, 2013 2 sessions
October 23, 2013 2 sessions
October 24, 2013 1 session
April 9, 2014 2 sessions
April 10, 2014 2 sessions
April 11, 2014 1 session

One (1) Hearing session on expungement request @ \$1,200.00/session = \$ 1,200.00

Hearing Date: April 28, 2014 1 session
Total Hearing Session Fees =\$24,450.00

The Panel has assessed \$23,250.00 of the hearing session fees to Respondents Morgan Stanley, MS&Co. and Wyatt, jointly and severally.

The Panel has assessed the total hearing session fees for the April 28, 2014, recorded telephonic hearing on Respondents Zimmerman and Brister's requests for expungement in the amount of \$1,200.00 to Respondents Zimmerman and Brister, jointly and severally.

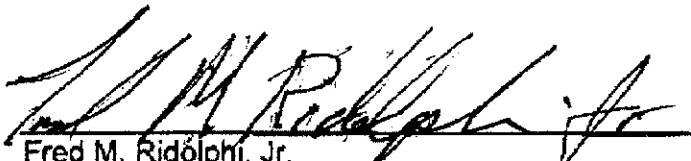
All balances are payable to FINRA Dispute Resolution and are due upon receipt.

ARBITRATION PANEL

Fred M. Ridolphi, Jr.	-	Public Arbitrator, Presiding Chairperson
Gloria J. Liddell	-	Public Arbitrator
Kenneth W. Shelley	-	Non-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


Fred M. Ridolphi, Jr.
Public Arbitrator, Presiding Chairperson

5.22-14
Signature Date

Gloria J. Liddell
Public Arbitrator

Signature Date

Kenneth W. Shelley
Non-Public Arbitrator

Signature Date

MAY 23, 2014

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

ARBITRATION PANEL

Fred M. Ridolphi, Jr.	-	Public Arbitrator, Presiding Chairperson
Gloria J. Liddell	-	Public Arbitrator
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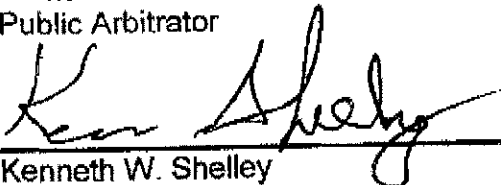
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Public Arbitrator, Presiding Chairperson

Signature Date

Gloria J. Liddell
Public Arbitrator



Kenneth W. Shelley
Non-Public Arbitrator

Signature Date

5-23-2014
Signature Date

MAY 23, 2014

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

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Public Arbitrator, Presiding Chairperson



Gloria J. Liddell
Public Arbitrator

Signature Date

May 23, 2014

Signature Date

Kenneth W. Shelley
Non-Public Arbitrator

Signature Date

MAY 23, 2014

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