

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimants

Juan Carlos Vignaud and Cathrine Vignaud JT
TEN

Case Number: 16-02920

vs.

Respondent

Morgan Stanley Smith Barney, LLC

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Customers vs. Member

This case was decided by an all-public Arbitrator.

REPRESENTATION OF PARTIES

For Claimants Juan Carlos Vignaud and Cathrine Vignaud JT TEN: William B. Young, Jr., Esq., Colling, Gilbert, Wright & Carter, LLC, Orlando, Florida.

For Respondent Morgan Stanley Smith Barney, LLC ("MSSB"): Christopher M. Sacco, Esq., Morgan Stanley, St. Petersburg, Florida.

*FINRA recorded the appearance of Claimants' counsel at the time of filing of the Statement of Claim. The counsel's representation of the Claimants may have ended with the parties' settlement. Please see the Other Issues Considered and Decided section of this award for information on whether Claimants' counsel appeared at the expungement hearing.

CASE INFORMATION

Statement of Claim filed on or about: September 29, 2016.

Juan Carlos Vignaud and Cathrine Vignaud JT TEN signed the Submission Agreement: September 20, 2016.

Statement of Answer filed by Respondent on or about: January 25, 2017.

MSSB signed the Submission Agreement: January 25, 2017.

CASE SUMMARY

Claimants asserted the following causes of action: unsuitability; misrepresentations and omissions; breach of fiduciary duty; violation of NASD/FINRA Conduct Rules; negligence; failure of supervision; breach of contract; and vicarious liability. The causes of action relate to Claimants' purchase of 100,000 Cliffs Natural Resources Bonds

which allegedly led to margin calls, a forced sale of securities, and a non-purpose loan collateralized by Claimants' brokerage account to finance Claimants' home.

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, Claimants requested: damages of not less than \$97,000.00; lost interest; costs and expenses of this proceeding; and such other and further relief as the Arbitrator deemed just and proper.

In the Statement of Answer, Respondent requested: denial of Claimants' claims; an assessment of all costs and forum fees against Claimants; and a recommendation of expungement of all references to Claimants' claims from non-party Astrid Sonia Nino's ("Nino") Central Registration Depository ("CRD") records.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator acknowledges that he has read the pleadings and other materials filed by the parties.

On or about November 21, 2017, Claimants filed with FINRA Office of Dispute Resolution a notice of settlement, and Respondent requested that the file remain open in order for the Arbitrator to consider Respondent's request for expungement on behalf of non-party Nino. Therefore, the Arbitrator made no determinations with respect to the claims asserted against Respondent in the Statement of Claim.

The Arbitrator conducted a recorded telephonic hearing on January 16, 2018, so the parties could present oral argument and evidence on Respondent's request for expungement. Claimants did not participate in the expungement hearing and did not contest the request for expungement.

The Arbitrator reviewed the BrokerCheck® report for non-party Nino and the settlement documents, considered the amount of payments made to any party, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on Claimants not opposing the request for expungement. The Arbitrator also noted that non-party Nino did not contribute to the settlement amount and did not previously file a claim requesting expungement of the same disclosure in the CRD.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the pleadings; Respondent's Motion for Expungement and exhibits; the statement and testimony of non-party Nino; the Settlement Agreement; and affirmations by non-party Nino and Respondent's counsel, Christopher Sacco, on behalf of Respondent and non-party Nino.

The Arbitrator has provided an explanation of his decision in this award. The explanation is for the information of the parties only and is not precedential in nature.

AWARD

After considering the pleadings, the testimony and evidence presented at the recorded telephonic hearing, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. The Arbitrator recommends the expungement of all references to the above-captioned arbitration from registration records maintained by the CRD, for non-party Astrid Nino (CRD # 5910528), with the understanding that, pursuant to Notice to Members 04-16, non-party Nino 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 Arbitrator has made the following Rule 2080 affirmative findings of fact:

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

The claim, allegation, or information is false.

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

Evidence was presented at the hearing on expungement that all settlement fees were paid by Respondent MSSB, not non-party Nino. The amount of the settlement was negligible compared to the damages claimed. Allegations contained in Claimants' pleadings were erroneous and false based upon the uncontroverted testimony of non-party Nino, who followed Claimants' wishes. At the hearing, non-party Nino testified that she urged Claimants to sell the bonds at issue in this matter. Non-party Nino also testified that she urged Claimants to sell specific assets and Claimants refused to do so, due to the expense of the sale. The Arbitrator determined that Claimants' failure to follow non-party Nino's advice led to, and contributed to, the losses Claimants later complained about. This is the primary reason why the claim was false, factually impossible or clearly erroneous. Therefore, non-party Nino should be granted expungement under Rule 2080(b)(1)(A) and (C).

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

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|--------------------------|-------------|
| Initial Claim Filing Fee | = \$ 975.00 |
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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 a party, Respondent MSSB is assessed the following:

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| Member Surcharge | = \$ 1,100.00 |
| Member Process Fee | = \$ 2,250.00 |

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(s), including a pre-hearing conference with the arbitrator(s) that lasts four (4) hours or less. Fees associated with these proceedings are:

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| One (1) pre-hearing session with a single arbitrator @ \$450.00/session | = \$ 450.00 |
| Pre-hearing conference: January 31, 2017 1 session | |

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| One (1) hearing session on expungement request @ \$450.00/session | = \$ 450.00 |
| Hearing Date: January 16, 2018 1 session | |

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| Total Hearing Session Fees | = \$ 900.00 |
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The Arbitrator has assessed \$225.00 of the hearing session fees to Claimant.

The Arbitrator has assessed \$675.00 of the hearing session fees to Respondent, which includes the entire expungement hearing session fee.

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

ARBITRATOR

Steven E. Eisenberg

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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



Steven E. Eisenberg
Sole Public Arbitrator

1/26/18

Signature Date

1/26/18

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