

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimants
Stephen R. Balok
Brenda J. Balok

Case Number: 16-03473

vs.

Respondent
Morgan Stanley Smith Barney LLC

Hearing Site: Albuquerque, New Mexico

Nature of the Dispute: Customers vs. Member

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimants Stephen R. Balok and Brenda J. Balok, hereinafter collectively referred to as "Claimants": Clinton W. Marrs, Esq., Marrs Griebel Law, Ltd., Albuquerque, New Mexico.

For Respondent Morgan Stanley Smith Barney LLC ("Respondent"): John S. Worden, Esq., Schiff Hardin LLP, San Francisco, California and Matthew P. Broccolo, Esq., Schiff Hardin LLP, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: November 29, 2016.
Claimants signed the Submission Agreement: November 23, 2016.

Statement of Answer filed by Respondent on or about: March 10, 2017.
Respondent signed the Submission Agreement: March 10, 2017.

CASE SUMMARY

Claimants asserted the following causes of action: suitability; deceptive trade practices; breach of fiduciary duty; negligent misrepresentation; breach of contract and implied covenant of good faith and fair dealing; negligent supervision; control person liability; and respondeat superior. Claimants alleged losses in eight accounts held with Respondent resulting from the participation in an investment advisory program and from the purchase of individual junk bonds, ETFs that invested in derivatives and futures contracts, and option contracts.

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:

1. Compensatory damages, plus disgorgement in full for all commissions, sales charges, fees, charges and expenses paid by or out of their investment assets, plus pre-judgment interest on such compensatory damages and disgorged amounts;
2. Special damages, plus pre-award interest on such special damages;
3. Punitive damages or, alternatively, up to treble damages;
4. Costs;
5. Expert fees;
6. Attorneys' fees;
7. Post-award interest on the total principal amount of the award at the highest rate allowed by law from the date of the award until the award is paid; and
8. Such other and further relief as is just and proper.

In the Statement of Answer, Respondent requested:

1. Denial of the claim in its entirety;
2. Claimants take nothing by reason of the Statement of Claim;
3. Expungement of any reference to this matter from the Central Registration Depository ("CRD") records of unnamed party Timothy J. Prouty ("Prouty"); and
4. Whatever relief the Panel may deem appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

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

At the evidentiary hearing, in its closing argument, Respondent reiterated its expungement request for unnamed party Prouty set forth in the Statement of Answer. Claimants did not respond to the expungement request.

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, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable for and shall pay to Claimants the amount of \$519,089.00 in compensatory damages.

2. Respondent is liable for and shall pay to Claimants interest on the amount of \$519,089.00 at the rate of 8.75% per annum from April 5, 2019 until paid in full.
3. Respondent's request for expungement of the CRD records of unnamed party Prouty is denied.
4. Any and all claims for relief not specifically addressed herein, including Claimants' requests for punitive and treble damages, and attorneys' fees, are denied.

FEES

Pursuant to the Code of Arbitration Procedure, the following fees are assessed:

Filing Fees

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

Initial Claim Filing Fee	=\$ 1,575.00
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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 is assessed the following:

Member Surcharge	=\$ 1,900.00
Member Process Fee	=\$ 3,750.00

Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

May 8-11, 2018, postponement by the parties	=\$1,125.00
October 23-26, 2018, postponement by Respondent	=\$1,125.00

Total Postponement Fees	=\$2,250.00
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The Panel has assessed \$562.50 of the postponement fees jointly and severally to Claimants.

The Panel has assessed \$1,687.50 of the postponement fees to Respondent.

Last Minute Cancellation Fees

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

October 17, 2018, postponement requested by Respondent	=\$1,200.00
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Total Last Minute Cancellation Fees	=\$1,200.00
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The Panel has assessed \$1,200.00 of the last minute cancellation fees to Respondent.

Contested Motion for Issuance of Subpoena Fee

Fees apply for each decision on a contested motion for the issuance of a subpoena.

One (1) decision on a contested motion for the issuance of a subpoena
with one arbitrator @ \$250.00 = \$250.00

Total Contested Motion for Issuance of Subpoena Fee = \$250.00

The Panel has assessed \$250.00 of the contested motion for issuance of subpoenas fees to Respondent.

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:

Three (3) pre-hearing sessions with the Panel @ \$1,125.00/session = \$3,375.00
Pre-hearing conferences: May 9, 2017 1 session
May 29, 2018 1 session
October 23, 2018 1 session

Eleven (11) hearing sessions @ \$1,125.00/session = \$12,375.00
Hearing Dates: April 1, 2019 2 sessions
April 2, 2019 2 sessions
April 3, 2019 3 sessions
April 4, 2019 2 sessions
April 5, 2019 2 sessions

Total Hearing Session Fees = \$15,750.00

The Panel has assessed \$7,312.50 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$8,437.50 of the hearing session fees to Respondent.

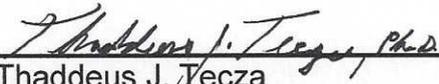
All balances are payable to FINRA Office of Dispute Resolution and are due upon receipt.

ARBITRATION PANEL

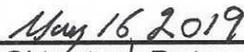
Thaddeus J. Tecza	-	Public Arbitrator, Presiding Chairperson
Herbert Liberman	-	Public Arbitrator
James Mark Eason	-	Public Arbitrator

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



Thaddeus J. Tecza
Public Arbitrator, Presiding Chairperson



Signature Date

Herbert Liberman
Public Arbitrator

Signature Date

James Mark Eason
Public Arbitrator

Signature Date

May 17, 2019
Date of Service (For FINRA Office of Dispute Resolution office use only)

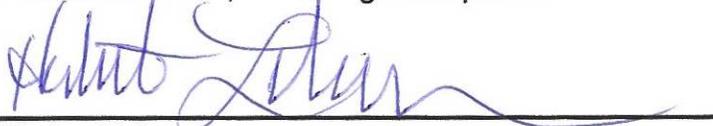
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Herbert Liberman	-	Public Arbitrator
James Mark Eason	-	Public Arbitrator

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Thaddeus J. Tecza
Public Arbitrator, Presiding Chairperson



Herbert Liberman
Public Arbitrator

Signature Date

5/16/2019

Signature Date

James Mark Eason
Public Arbitrator

Signature Date

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ARBITRATION PANEL

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Public Arbitrator, Presiding Chairperson

Signature Date

Herbert Liberman
Public Arbitrator

Signature Date

James Mark Eason

Digitally signed by James Mark Eason
DN: cn=James Mark Eason, o, ou,
email=santafe1000@msn.com, c=US
Date: 2019.05.16 10:45:56 -06'00'

James Mark Eason
Public Arbitrator

Signature Date

May 17, 2019

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