

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimants

Isabel Litovich-Quintana
Jose A. Torres

Case Number: 17-01908

vs.

Respondent

Morgan Stanley Smith Barney, LLC d/b/a Morgan
Stanley

Hearing Site: Miami, Florida

Nature of the Dispute: Customers vs. Member

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimants Isabel Litovich-Quintana and Jose A. Torres: Jeffrey Erez, Esq., Sonn & Erez, PLC, Miami, Florida and Eliezer A. Aldarondo-Lopez, Aldarondo & Lopez-Bras, PSC, Guaynabo, Puerto Rico.

For Respondent Morgan Stanley Smith Barney LLC d/b/a Morgan Stanley: Joseph C. Coates, III, Esq. and Jason M. Fedo, Esq., Greenberg Traurig, P.A., West Palm Beach, Florida, and Luis N. Saldana-Roman, Esq., Saldaña, Carvajal & Vélez-Rivé, P.S.C., San Juan, Puerto Rico.

CASE INFORMATION

Statement of Claim filed on or about: July 19, 2017.

Claimants signed the Submission Agreement: July 19, 2017.

Answer to Statement of Claim filed by Respondent on or about: November 6, 2017.

Morgan Stanley Smith Barney LLC d/b/a Morgan Stanley signed the Submission Agreement: August 16, 2017.

Amended Statement of Claim filed on or about: November 29, 2017.

Answer to Amended Statement of Claim filed by Respondent on or about: December 29, 2017.

CASE SUMMARY

In their Statement of Claim, as amended, Claimants asserted the following causes of action: breach of fiduciary duty; negligence; negligent supervision; fraud; breach of

contract; breach of contract – third party beneficiary; violation of Sections 10(b) of the Securities Exchange Act and Rule 10b-5 of the Securities and Exchange Commission; violation of the Florida Securities and Investor Protection Act; and violation of the Puerto Rico Uniform Securities Act. The causes of action relate to Claimants' investments in Puerto Rico bonds and closed-end bond funds, as well as the use of a securities-backed loan.

Unless specifically admitted in its Statement of Answer, Respondent denied the allegations made in the Statement of Claim, as amended, and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, as amended, Claimants requested: compensatory damages of between \$1,000,000.00 and \$5,000,000.00; interest; attorneys' fees; punitive damages; rescission; statutory damages; costs; and such other and further relief the Panel deemed just and proper.

In its Answer to the Statement of Claim, as amended, Respondent requested that Claimants' claims be denied in their entirety and that all forum fees and costs be assessed against Claimants.

At the close of the hearing, Claimants requested damages of at least \$2,739,792.00, plus attorneys' fees in the amount of \$515,624.00 and punitive damages in the amount of \$10,959,168.00.

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 November 2, 2017, Claimants filed a Motion for Leave to Amend the Statement of Claim in which Claimants sought to amend the Statement of Claim to add an additional count (Breach of Contract – Third-Party Beneficiary) against Respondent. Respondent did not oppose the Motion. On or about November 29, 2017, the Panel entered an Order granting Claimants' Motion.

On or about December 14, 2018, the Panel issued an Order which granted the parties' stipulation to change the hearing venue from Puerto Rico to Miami, Florida.

During the evidentiary hearings, Claimants made an oral Motion for Discovery Sanctions against Respondent. Respondent opposed the Motion. The Panel held any ruling on the Motion for Discovery Sanctions in abeyance until the conclusion of the evidentiary hearings. After the hearings concluded, the Panel issued an Order on April 30, 2019, instructing the parties to file briefs on the Motion for Discovery Sanctions. Both parties filed briefs on or about May 31, 2019. In its Motion for Discovery Sanctions post-hearing brief, Claimants argued that Respondent failed to produce critical documents responsive to Claimants' discovery request and thereby concealed documents relevant to the central issues in the matter. In its opposition to the Motion for

Discovery Sanctions post-hearing brief, Respondent argued, among other things, that it complied with all discovery obligations and did not engage in any conduct warranting sanctions. The Panel's decision with respect to Claimants' Motion is set forth in the Award section below.

The Arbitrators have provided an explanation of their decision in this award. The explanation is for the information of the parties only and is not precedential in nature.

The parties present at the hearing 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. Respondent is liable for and shall pay to Claimants the sum of \$261,420.63 in compensatory damages.
2. Respondent is liable for and shall pay to Claimants interest on the above-stated sum at the rate of 0.1% per annum from March 31, 2013, through and including August 30, 2014.
3. Respondent is liable and shall pay to Claimants the sum of \$3,000,000.00 in monetary sanctions, in accordance with Rules 12212 and 12511 of the Code of Arbitration Procedure (the "Code"). The Panel has provided the following explanation for their finding:

During the course of the evidentiary hearing, the Panel was made aware of Respondent's alleged failure to comply with a discovery request Order, which was granted pre-hearing by the prior Chairperson with respect to the production of documents related to the termination of a key employee of Respondent. After hearing oral argument on the issue by both parties, the full Panel issued the same Order as was previously issued by the prior Chairperson for production of "all" related documents by midnight. The Panel noted that the prior Chairperson's Order did not limit itself to "pre-termination" or "post-termination" documents when it stated "all." Respondent did not send the requested documents to Claimants' counsel by midnight, nor did Respondent's counsel provide opposing counsel with the courtesy of an email by midnight explaining why "all" the ordered documents were not being produced. The evidentiary hearing was delayed, for a second time, to permit both parties to provide oral argument on the "settlement privilege" which Respondent's counsel alleged applied to the documents that Respondent was withholding and proposing to have the Panel review "in camera." The Panel again ordered the withheld documents to be handed to Claimants' counsel, and not to the Panel for in camera review. The Panel took note of the extreme prejudice Respondent's failure of compliance caused Claimants' counsel in preparing their case and asserting their claims without the withheld

documents which the Panel deemed were highly relevant to the dispute in question, the central figure of which was the terminated employee whose related documents were being withheld. Claimants' counsel repeatedly requested that Respondent be assessed monetary sanctions for its failure of compliance with the Panel's Orders. At the conclusion of the evidentiary hearing, the Panel ordered both parties to submit post-hearing briefs on the issue of the sanctions requested by Claimants against Respondent.

The Panel noted that Rule 12506(b)(2) of the Code related to parties' obligation to "act in good faith when complying with subparagraph (1) of this rule. 'Good faith' means that a party must use its best efforts to produce all documents required or agreed to be produced. If a document cannot be produced in the required time, a party must establish a reasonable timeframe to produce the document." The Panel also took note of Rule 12212 of the Code related to sanctions: "(a) The panel may sanction a party for failure to comply with any provision in the Code, or any order of the panel or single arbitrator authorized to act on behalf of the panel. Unless prohibited by applicable law, sanctions may include, but are not limited to:

- Assessing monetary penalties payable to one or more parties; . . ."

In accordance with the above, after due deliberation and upon consideration of the negative effect that Respondent's noncompliance with the Panel's Orders had on its efforts to achieve a fair arbitration hearing, the Panel hereby orders Respondent to pay monetary sanctions to Claimants in the amount of \$3,000,000.00.

4. Other than forum fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter.
5. Any and all claims for relief not specifically addressed herein, including Claimants' requests for punitive damages and attorneys' fees, are denied.

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 | = \$ 2,000.00 |
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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:

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| Member Surcharge | = \$ 3,025.00 |
| Member Process Fee | = \$ 6,175.00 |

Discovery-Related Motion Fee

Fees apply for each decision rendered on a discovery-related motion.

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| Two (2) decisions on discovery-related motions on the papers with one (1) arbitrator @ \$200.00/decision | = \$ 400.00 |
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Claimants submitted one (1) discovery-related motion
Respondent submitted one (1) discovery-related motion

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| Total Discovery-Related Motion Fees | = \$ 400.00 |
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The Panel has assessed \$200.00 of the discovery-related motion fees jointly and severally to Claimants.

The Panel has assessed \$200.00 of the discovery-related motion 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:

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|---|-------------|
| One (1) pre-hearing session with a single arbitrator @ \$450.00/session | = \$ 450.00 |
| Pre-hearing conference: November 8, 2018 1 session | |

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| One (1) pre-hearing session with the Panel @ \$1,400.00/session | = \$ 1,400.00 |
| Pre-hearing conference: December 19, 2017 1 session | |

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| Forty-six (46) hearing sessions with the Panel @ \$1,400.00/session | = \$64,400.00 |
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| Hearing Dates: | January 14, 2019 | 2 sessions |
| | January 15, 2019 | 2 sessions |
| | January 16, 2019 | 3 sessions |
| | January 17, 2019 | 3 sessions |
| | January 18, 2019 | 3 sessions |
| | January 21, 2019 | 2 sessions |
| | January 22, 2019 | 2 sessions |
| | January 23, 2019 | 3 sessions |
| | January 24, 2019 | 2 sessions |
| | March 2, 2019 | 2 sessions |
| | March 3, 2019 | 2 sessions |
| | March 4, 2019 | 2 sessions |
| | March 5, 2019 | 3 sessions |
| | March 6, 2019 | 1 session |
| | April 22, 2019 | 2 sessions |
| | April 23, 2019 | 3 sessions |

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|----------------|------------|
| April 24, 2019 | 3 sessions |
| April 25, 2019 | 3 sessions |
| April 26, 2019 | 3 sessions |

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| Total Hearing Session Fees | = \$66,250.00 |
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The Panel has assessed \$32,900.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$33,350.00 of the hearing session fees to Respondent.

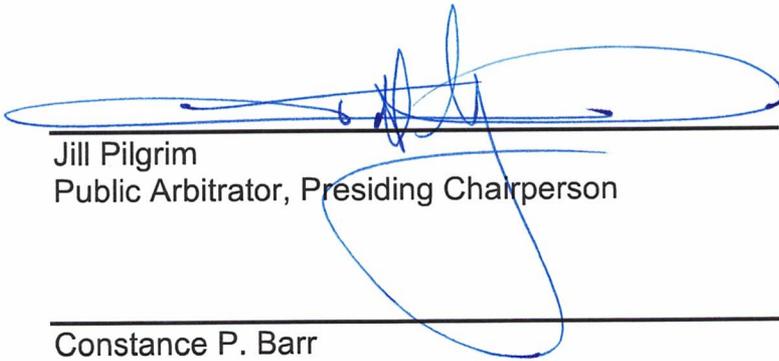
All balances are payable to FINRA Office of Dispute Resolution and are due upon receipt.

ARBITRATION PANEL

| | | |
|-------------------|---|--|
| Jill Pilgrim | - | Public Arbitrator, Presiding Chairperson |
| Constance P. Barr | - | Public Arbitrator |
| Irlanda Ruiz | - | 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



Jill Pilgrim
Public Arbitrator, Presiding Chairperson

7/16/2019

Signature Date

Constance P. Barr
Public Arbitrator

Signature Date

Irlanda Ruiz
Public Arbitrator

Signature Date

JULY 16, 2019

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

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Concurring Arbitrators' Signatures

Jill Pilgrim
Public Arbitrator, Presiding Chairperson

Signature Date

Constance P. Barr

Constance P. Barr
Public Arbitrator

7/15/2019

Signature Date

Irlanda Ruiz
Public Arbitrator

Signature Date

JULY 16, 2019

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

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Public Arbitrator, Presiding Chairperson

Signature Date

Constance P. Barr
Public Arbitrator

Signature Date



Irlanda Ruiz
Public Arbitrator



Signature Date

JULY 16, 2019

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