

Award
FINRA Dispute Resolution

In the Matter of the Arbitration Between:

Claimants

Jonathan Axelrad
Frances Axelrad

Case Number: 14-00771

vs.

Respondents

Eugene Nathan Gordon
Morgan Stanley Smith Barney, LLC
Cira Nickerson

Hearing Site: San Francisco, California

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

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimants Jonathan Axelrad and Frances Axelrad, hereinafter collectively referred to as "Claimants": Jotham S. Stein, Esq., Law Offices of Jotham S. Stein P.C., Palo Alto, California.

For Respondents Eugene Nathan Gordon ("Gordon"), Morgan Stanley Smith Barney, LLC ("Morgan Stanley"), and Cira Nickerson ("Nickerson"), hereinafter collectively referred to as "Respondents": Peter R. Boutin, Esq., Keesal, Young & Logan, San Francisco, California.

CASE INFORMATION

Statement of Claim filed on or about: March 10, 2014.

Statement of Answer filed by Respondents Morgan Stanley and Gordon on or about: May 29, 2014.

First Amended Statement of Claim filed on or about: May 6, 2015.

Claimants signed the Submission Agreement: March 5, 2014.

Morgan Stanley signed the Submission Agreement: April 29, 2014.

Gordon signed the Submission Agreement: June 5, 2014.

Nickerson signed the Submission Agreement: June 11, 2015.

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duty against Morgan Stanley and Gordon, fraud/detrimental reliance against Morgan Stanley and Gordon, negligence against Morgan Stanley and Gordon, breach of contract against Morgan Stanley, breach of implied covenant of good faith and fair dealing against Morgan Stanley, unsuitability against Morgan Stanley and Gordon, violation of FINRA Rule 2010 against Morgan Stanley, and failure to supervise against unknown Morgan Stanley employees. The causes of action relate to Claimants' retirement account and alleged error in Morgan Stanley's mathematical retirement calculations.

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

In the First Amended Statement of Claim, Claimants added Nickerson as an additional Respondent, and added a cause of action for failure to supervise against Morgan Stanley and Nickerson.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested:

1. Contract damages according to proof;
2. Special damages, consequential, and tort damages according to proof;
3. Punitive damages;
4. Interest at 10% per year from April 23, 2013, or in the alternative, an increase of the award by the average daily rate of return for the basket of equities that the Claimants were invested in from April 23, 2013 to the date the award is paid;
5. Attorneys' fees, expert fees, and expenses; and
6. All other relief as the Panel determines is just and proper.

Respondents Morgan Stanley and Gordon requested:

1. Dismissal with prejudice of the Statement of Claim and all causes of action set forth therein in their entirety;
2. Costs of arbitration incurred in defending this claim;
3. Assessment of all forum fees against the Claimants;
4. A recommendation that this claim be expunged in its entirety from the regulatory and registration records of Gordon including, without limitation, those records maintained by the Central Registration Depository; and
5. Such other relief as the Panel deems just and proper.

In the First Amended Statement of Claim, Claimants requested:

1. Contract damages according to proof;
2. Special damages, consequential, and tort damages according to proof;
3. Punitive damages;
4. Attorneys' fees, expert fees, and other expenses; and
5. All other relief as the Panel determines is just and proper.

At the close of the hearing, Claimants requested:

1. Make-whole damages of \$8,492,568.00;
2. Interest of \$1,769,285.00;
3. Advisory fees and commissions of \$325,526.00; and
4. Attorneys' fees and costs of \$637,000.00.

OTHER ISSUES CONSIDERED AND DECIDED

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

On May 6, 2015, Claimants filed a motion to amend the Statement of Claim. Claimants' motion noted that parties agreed to the filing of the First Amended Statement of Claim. On May 27, 2015, the Panel granted Claimants' unopposed request to file the First Amended Statement of Claim.

On June 5, 2015, the Panel issued the following order: "Respondents' counsel should advise if he is prepared to go to hearing as scheduled with the newly added Respondent, Cira Nickerson, who has yet to file a Statement of Answer. The Panel does not want to force the newly added Respondent into a hearing unprepared. Please confirm in writing no later than 2:00 p.m. today." Also on June 5, 2015, Respondents counsel advised that Respondents were prepared to go to hearing as scheduled with the newly-added Respondent Nickerson.

The Panel finds that, despite not having filed a written Statement of Answer, Respondent Nickerson had a full opportunity to defend the Statement of Claim at the evidentiary hearing.

After the conclusion of the evidentiary hearing, Respondents Gordon and Nickerson withdrew their 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, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Morgan Stanley is liable for and shall pay to Claimants \$325,526.00 in compensatory damages.
2. Claimants' claims against Respondents Gordon and Nickerson are denied in their entirety.
3. Any and all relief not specifically addressed herein, including 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 | =\$ 1,250.00 |
|--------------------------|--------------|

**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, Morgan Stanley Smith Barney, LLC is assessed the following:

| | |
|----------------------------|--------------|
| Member Surcharge | =\$ 1,500.00 |
| Pre-Hearing Processing Fee | =\$ 750.00 |
| Hearing Processing Fee | =\$ 2,200.00 |

Adjournment Fees

Adjournments granted during these proceedings for which fees were waived:

| | |
|---|----------|
| May 4-8, 2015, adjournment by Claimants | = waived |
|---|----------|

Discovery-Related Motion Fees

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

| | |
|--|------------|
| One (1) Decision on a discovery-related motion on the papers with one arbitrator @ \$200.00 | = \$200.00 |
| Respondents Morgan Stanley and Gordon submitted one discovery-related motion | |

| | |
|-------------------------------------|------------|
| Total Discovery-Related Motion Fees | = \$200.00 |
|-------------------------------------|------------|

1. The Panel has assessed \$100.00 of the discovery-related motion fees jointly and severally to Claimants.
2. The Panel has assessed \$100.00 of the discovery-related motion fees jointly and severally to Respondents.

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: February 2, 2015 1 session | |

| | |
|---|-------------|
| One (1) Pre-hearing session with the Panel @ \$1,000.00/session | =\$1,000.00 |
|---|-------------|

Pre-hearing conference: November 19, 2014 1 session

Thirteen (13) Hearing sessions @ \$1,000.00/session = \$13,000.00

| | | |
|----------------|---------------|------------|
| Hearing Dates: | June 8, 2015 | 2 sessions |
| | June 9, 2015 | 2 sessions |
| | June 10, 2015 | 2 sessions |
| | June 11, 2015 | 2 sessions |
| | June 12, 2015 | 3 sessions |
| | June 19, 2015 | 2 sessions |

| | |
|----------------------------|---------------|
| Total Hearing Session Fees | = \$14,450.00 |
|----------------------------|---------------|

1. The Panel has assessed \$7,225.00 of the hearing session fees jointly and severally to Claimants.
2. The Panel has assessed \$7,225.00 of the hearing session fees jointly and severally to Respondents.


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

ARBITRATION PANEL

| | | |
|---------------------|---|--|
| Sterling N. Frost | - | Public Arbitrator, Presiding Chairperson |
| James N. D'Orso | - | Public Arbitrator |
| Norman Dale Menegat | - | 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



Sterling N. Frost
Public Arbitrator, Presiding Chairperson

July 16, 2015
Signature Date

James N. D'Orso
Public Arbitrator

Signature Date

Norman Dale Menegat
Public Arbitrator

Signature Date

July 16, 2015
Date of Service (For FINRA Dispute Resolution office use only)

ARBITRATION PANEL

| | | |
|---------------------|---|--|
| Sterling N. Frost | - | Public Arbitrator, Presiding Chairperson |
| James N. D'Orso | - | Public Arbitrator |
| Norman Dale Menegat | - | 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

Sterling N. Frost
Public Arbitrator, Presiding Chairperson

Signature Date


James N. D'Orso
Public Arbitrator

07/14/2015
Signature Date

Norman Dale Menegat
Public Arbitrator

Signature Date

July 16, 2015
Date of Service (For FINRA Dispute Resolution office use only)

ARBITRATION PANEL

| | | |
|---------------------|---|--|
| Sterling N. Frost | - | Public Arbitrator, Presiding Chairperson |
| James N. D'Orso | - | Public Arbitrator |
| Norman Dale Menegat | - | 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

Sterling N. Frost
Public Arbitrator, Presiding Chairperson

Signature Date

James N. D'Orso
Public Arbitrator

Signature Date



Norman Dale Menegat
Public Arbitrator

7/15/2015

Signature Date

July 16, 2015

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