

**Award  
FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimants/Counter-Respondents

Morgan Stanley  
Morgan Stanley Smith Barney FA Notes Holdings  
LLC

Case Number: 12-02414

vs.

Respondent/Counter-Claimant

Matthew Joseph Celenza

Hearing Site: Los Angeles, California

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Nature of the Disputes: Member and Non-Member vs. Associated Person  
Associated Person vs Member and Non-Member

**REPRESENTATION OF PARTIES**

Claimants/Counter-Respondents Morgan Stanley and Morgan Stanley Smith Barney FA Notes Holdings LLC, hereinafter collectively referred to as "Claimants": Mauricio S.Beugelmans, Esq., Beugelmans, PLLC, New York, New York

Respondent/Counter-Claimant Matthew Joseph Celenza, hereinafter referred to as "Respondent": Jeffrey K. Riffer, Esq., Elkins Kalt Weintraub Reuben Gartside LLP, Los Angeles, California

**CASE INFORMATION**

Statement of Claim filed on or about: June 28, 2012

Claimants signed Submission Agreements: June 27, 2012

Statement of Answer and Counterclaim filed by Respondent on or about: September 20, 2012

Respondent signed the Submission Agreement: August 29, 2012

Statement of Answer to the Counterclaim filed by Claimants on or about: November 9, 2012

### **CASE SUMMARY**

Claimants asserted that Respondent breached two Promissory Notes that Respondent executed on April 20, 2009 and January 3, 2012. Claimants allege that the Promissory Notes became due and payable upon Respondent's termination with Claimants.

Unless specifically admitted in his Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In his Counterclaim, Respondent asserted the following causes of action: fraud, negligent misrepresentation, breach of contract, interference with prospective economic advantage, misappropriation/improper withholding of accounts, violation of California Business and Professions Code section 17200, et. seq., and violation of FINRA Rule 2010.

Unless specifically admitted in their Answer, Claimants denied the allegations made in the Counterclaim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested:

1. The outstanding principal amount of \$1,714,056.00, plus pre-award interest at the rate of 2.45%, or \$115.05 per day, from March 20, 2012 to the date of the award, plus post-award interest at the legal rate;
2. The outstanding principal amount of \$874,237.00, plus pre-award interest at the rate of 1.17%, or \$28.02 per day, from March 20, 2012 to the date of award, plus post-award interest at the legal rate;
3. Fees and expenses, including the FINRA filing fee of \$6,000.00, and all FINRA forum fees;
4. Attorneys' fees; and
5. Such other and further relief as the Panel deems appropriate.

In his Answer and Counterclaim, Respondent requested:

1. The Statement of Claim be dismissed in its entirety with prejudice;
2. Compensatory damages in an amount presently unknown, but currently estimated to be in excess of \$2,500,000.00;
3. Restitution;
4. Punitive damages;
5. Prejudgment interest;
6. Attorneys' fees;
7. Costs; and
8. Such other and further relief as is just and proper.

In their Answer to the Counterclaim, Claimants requested:

1. Dismissal of the Counterclaim in its entirety;
2. The outstanding principal amount of \$2,588,293.00, plus pre-award interest at the rate of \$143.07 per day, from March 20, 2012 to the date of award, plus post-award interest at the legal rate;
3. Fees and expenses including all FINRA forum fees and the FINRA filing fee of \$6,000.00;
4. Attorneys' fees; and

5. Such other and further relief as the Panel deems appropriate.

### **OTHER ISSUES CONSIDERED AND DECIDED**

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

On November 9, 2012, Claimants filed a Motion to Sever Respondent's Counterclaim. On November 19, 2012, Respondent submitted a response opposing Claimants' motion. On November 29, 2012, Claimants submitted a reply in further support of their motion. On March 1, 2013, Respondent submitted a sur-reply in further opposition to Claimants' motion. On March 5, 2013, Claimants submitted an opposition to Respondent's sur-reply. On March 15, 2013, Respondent submitted a response to Claimant's opposition to his sur-reply. On March 26, 2013, the Panel held a pre-hearing conference so the parties could present oral argument and evidence on Claimants' motion. By order dated March 27, 2013, the Panel granted Claimants' Motion to Sever Respondent's Counterclaim.

On February 28, 2014, Respondent filed a Motion to reconsider the Panel's Prior Order Granting Claimants' Motion to Sever. On March 7, 2014, Claimants filed a response of non-opposition to Respondent's motion. On June 5, 2014, the Panel held a pre-hearing conference to hear oral argument and evidence on Respondent's motion. By Order dated June 10, 2014, the Panel directed the Respondent to file a formal request to FINRA withdrawing the new arbitration case that was opened as a result of the Panel granting Claimants' Motion to Sever Respondent's Counterclaim. On June 18, 2014, the parties submitted an agreement to consolidate the arbitration matters pursuant to the Panel's June 10, 2014 Order. Accordingly, the Panel decided Claimants' Statement of Claim and Respondent's Counterclaim in this matter.

On September 3, 2014, Claimants submitted a Motion to Dismiss Respondent's Counterclaim. On October 20, 2014, Respondent submitted a response opposing Claimants' motion. On October 27, 2014, Claimants submitted a reply in further support of their motion. On November 20, 2014, the Panel held a pre-hearing conference so the parties could present oral argument and evidence on Claimants' motion. By Order dated November 24, 2014, the Panel denied Claimants' motion because the Panel believed the issues should be considered at the evidentiary hearing.

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 remaining balance due on the two Promissory Notes in the total amount of \$2,913,610.19.

2. Claimants are jointly and severally liable for and shall pay to Respondent compensatory damages in the amount of \$1,200,000.00.
3. The Counterclaim award is an offset to Claimants' award and the final award is: Respondent shall pay to Claimants \$2,913,610.19 minus the compensatory damages awarded to Respondent in the amount of \$1,200,000.00 for a net amount due to the Claimants of \$1,713,610.19, plus interest in the amount of \$140.50 per day from the date the award is served until the award of \$1,713,610.19 is paid in full.
4. Claimants shall release the funds in the Respondent's Morgan Stanley personal securities account within 30 days after the award has been served.
5. Claimants' and Respondent's requests for attorneys' fees are denied.
6. 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	= \$ 3,200.00
Counterclaim Filing Fee	= \$ 1,800.00

*\*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 is assessed the following:

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

#### **Adjournment Fees**

Adjournments granted during these proceedings:

November 5 – 8, 2013, adjournment by parties	= WAIVED
December 9 – 12, 2014, adjournment by parties	= \$ 1,200.00
<b>Total Adjournment Fees</b>	<b>= \$ 1,200.00</b>

1. The Panel has assessed 600.00 of the adjournment fees jointly and severally to Claimants.
2. The Panel has assessed \$600.00 of the adjournment fees to Respondent.

### **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:

December 9 – 12, 2014, adjournment by parties	= \$ 300.00
<b>Total Three-Day Cancellation Fees</b>	<b>= \$ 300.00</b>

1. The Panel has assessed \$150.00 of the three-day cancellation fees jointly and severally to Claimants.
2. The Panel has assessed \$150.00 of the three-day cancellation fees to Respondent.

### **Discovery-Related Motion Fees**

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

Five (5) Decisions on discovery-related motions on the papers with (1) one arbitrator @ \$200.00	= \$ 1,000.00
Claimant submitted (2) discovery-related motions	
Respondent submitted (3) discovery-related motions	
<b>Total Discovery-Related Motion Fees</b>	<b>= \$ 1,000.00</b>

1. The Panel has assessed \$400.00 of the discovery-related motion fees jointly and severally to Claimants.
2. The Panel has assessed \$600.00 of the discovery-related motion fees to Respondent.

### **Contested Motion for Issuance of a Subpoena Fees**

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 (1) one arbitrator @ \$200.00	= \$ 200.00
<b>Total Contested Motion for Issuance of Subpoenas Fees</b>	<b>= \$ 200.00</b>

1. The Panel has assessed \$100.00 of the contested motion for issuance of subpoenas fees jointly and severally to Claimants.
2. The Panel has assessed \$100.00 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:

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00/session	= \$ 900.00
Pre-hearing conference: November 25, 2014	1 session
October 10, 2013	1 session



Five (5) Pre-hearing sessions with the Panel @ \$1,200.00/session = \$ 6,000.00

Pre-hearing conferences: December 6, 2012 1 session  
March 26, 2013 1 session  
June 5, 2014 1 session  
November 20, 2014 1 session  
January 14, 2015 1 session

Twelve (12) Hearing sessions @ \$1,200.00/session = \$14,400.00

Hearing Dates: August 11, 2015 2 sessions  
August 12, 2015 2 sessions  
August 13, 2015 2 sessions  
August 14, 2015 1 session  
November 3, 2015 2 sessions  
November 4, 2015 1 session  
November 5, 2015 2 sessions

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Total Hearing Session Fees = \$21,300.00

1. The Panel has assessed \$11,025.00 of the hearing session fees jointly and severally to Claimants.
2. The Panel has assessed \$9,075.00 of the hearing session fees to Respondent.
3. The Panel has determined to waive the \$1,200.00 hearing session fee for the pre-hearing conference held January 14, 2015.

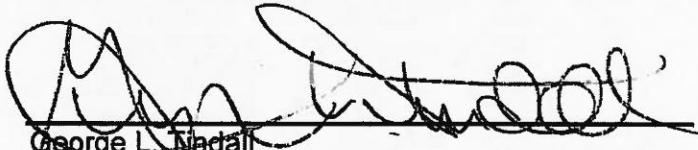
All balances are payable to FINRA Dispute Resolution and are due upon receipt.

**ARBITRATION PANEL**

George L. Tindall	-	Public Arbitrator, Presiding Chairperson
Gregory Douglas Stone	-	Public Arbitrator
Ronald F. Rybandt	-	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**

  
George L. Tindall  
Public Arbitrator, Presiding Chairperson

11/27/2015  
Signature Date

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Gregory Douglas Stone  
Public Arbitrator

\_\_\_\_\_  
Signature Date

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Ronald F. Rybandt  
Non-Public Arbitrator

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Signature Date

December 2, 2015  
Date of Service (For FINRA Dispute Resolution office use only)

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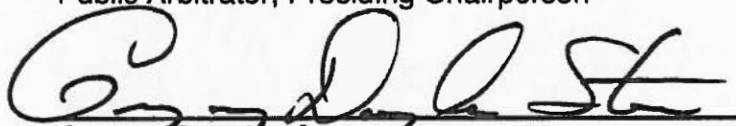
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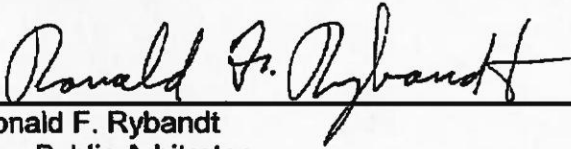
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Gregory Douglas Stone  
Public Arbitrator

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Signature Date

  
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Ronald F. Rybandt  
Non-Public Arbitrator

11-19-15  
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Signature Date

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