

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimants

Jerry Staub and Sandra Staub

Case Number: 16-02519

vs.

Respondent

Morgan Stanley & Co., LLC

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Customers vs. Member

This case was decided by a majority-public panel.

REPRESENTATION OF PARTIES

For Claimants Jerry Staub and Sandra Staub: Jenice L. Malecki, Esq. and Darryl J. Bouganim, Esq., Malecki Law, New York, New York.

For Respondent Morgan Stanley & Co., LLC: Chan H. Nam, Esq., Morgan Stanley Wealth Management, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: August 24, 2016.

Jerry Staub and Sandra Staub signed the Submission Agreement: August 15, 2016.

Statement of Answer filed by Respondent on or about: December 16, 2016.

Morgan Stanley & Co., LLC signed the Submission Agreement: December 16, 2016.

Motion to Compel and for Sanctions filed by Claimants on or about: April 5, 2017.

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duty; breach of contract; unsuitability; violation of FINRA Rule 2020; negligence; violation of The Investment Advisor Act of 1940; violation of New York General Business Law § 349(a); violation of Florida Statutes § 517.301; and respondeat superior and failure to supervise. The causes of action relate to Claimants' investments in equities, and oil and gas master limited partnerships ("MLPs").

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: compensatory damages in an amount no less than \$455,302.00; pre- and post-Award interest at the legal rate of 9%; punitive damages; attorneys' fees; and costs.

In the Statement of Answer, Respondent requested that the Panel dismiss all of Claimants' claims, and expungement of this arbitration from the Central Registration Depository ("CRD") records of non-party Stephen Taft.

At the close of the hearing, Claimants requested: compensatory damages in the amount of \$525,973.00; interest at the rate of 9%; attorneys' fees; costs totaling \$22,500.00; unspecified punitive damages; and sanctions for discovery abuse in an unspecified amount.

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 April 5, 2017, Claimants filed a Motion to Compel and for Sanctions asserting that Respondent had refused to produce any documents. On or about April 12, 2017, Claimants withdrew their Motion to Compel and for Sanctions citing recent efforts made by Respondent to comply with its discovery obligations. Accordingly, the Panel did not make any determination with respect to Claimants' Motion.

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 recorded, in-person hearing, and the post-hearing submissions (if any), 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 \$397,823.00 in compensatory damages. The Panel found liability on the following claims for relief: breach of fiduciary duty; negligence; respondeat superior and failure to supervise; breach of contract (suitability) and violation of Florida Statutes § 517.301. The Panel did not find liability on the claims for violation of The Investment Advisers Act of 1940 or violation of New York General Business Law § 349(a).
2. Respondent is liable for and shall pay to Claimants interest on the above-stated sum at the rate of 9.00% per annum from March 23, 2016, until the Award is paid in full.

3. Respondent is liable for and shall pay to Claimants the sum of \$15,000.00 in costs.
4. Respondent is liable for and shall pay to Claimants the sum of \$20,000.00 for discovery sanctions based on untimely production of documents near or at hearing.
5. Respondent is liable for and shall pay to Claimants attorneys' fees in an amount to be determined by a court of competent jurisdiction pursuant to Florida Statutes § 517.301.
6. Respondent's request for expungement on behalf of non-party Stephen Taft's CRD records is denied.
7. Any and all claims for relief not specifically addressed herein, including Claimants' request for punitive damages, are denied.

FEES

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

Filing Fees

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

Initial Claim Filing Fee	=\$ 1,425.00
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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

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 the Panel @ \$1,125.00/session	=\$ 1,125.00
Pre-hearing conference: January 9, 2017 1 session	

Ten (10) hearing sessions @ \$1,125.00/session	=\$11,250.00
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Hearing Dates:	October 23, 2017	2 sessions
	October 24, 2017	2 sessions
	October 25, 2017	2 sessions
	October 26, 2017	2 sessions
	October 27, 2017	2 sessions

Total Hearing Session Fees	= \$12,375.00
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The Panel has assessed \$562.50 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$11,812.50 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Donald Theodore Ryce, Jr.	-	Public Arbitrator, Presiding Chairperson
Fredric R. Dichter	-	Public Arbitrator
Sara Elizabeth Hanley	-	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

	
_____ Donald Theodore Ryce, Jr. Public Arbitrator, Presiding Chairperson	_____ Signature Date

_____ Fredric R. Dichter Public Arbitrator	_____ Signature Date
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_____ Sara Elizabeth Hanley Non-Public Arbitrator	_____ Signature Date
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November 1, 2017

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

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Signature Date



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Public Arbitrator



Signature Date

Sara Elizabeth Hanley
Non-Public Arbitrator

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11/1/17

Signature Date

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