

Award
FINRA Dispute Resolution

In the Matter of the Arbitration Between:

Claimant
Herbert Richman

Case Number: 12-03934

vs.

Respondent
Morgan Stanley Smith Barney LLC

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Customer vs. Member

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimant Herbert Richman: Randall C. Place, Esq. and Sara E. Hanley, Esq., The Law Offices of Place & Hanley, LLC, Naples, Florida and Darren Blum, Esq., Blum Law Group, Fort Lauderdale, Florida.

For Respondent Morgan Stanley: Lisa B. Dodge, Esq. and Brian C. Hale, Esq., Morgan Stanley Smith Barney LLC, Tampa, Florida.

CASE INFORMATION

Statement of Claim filed on or about: November 9, 2012.
Herbert Richman signed the Submission Agreement: October 20, 2012.

Statement of Answer filed by Respondent on or about: February 22, 2013.
Morgan Stanley Smith Barney LLC signed the Submission Agreement: February 22, 2013.

CASE SUMMARY

Claimant asserted the following causes of action: unsuitability; negligence; breach of contract; breach of fiduciary duty; common law fraud; and negligent hiring, retention and supervision. The causes of action relate to the following: 1) exchange of three Sun Life variable annuities into one MetLife variable annuity, 2) exchange of a Pacific Life annuity to a Prudential Premier Variable annuity and 3) exchange of a John Hancock annuity to a Prudential Premier Variable annuity.

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

RELIEF REQUESTED

In the Statement of Claim, Claimant requested unspecified compensatory damages, interest at the legal rate from the date of purchase or reasonable market return, punitive damages, rescission, attorneys' fees, costs and such other relief as is just and proper.

At the close of the hearing, Claimant requested compensatory damages of \$3,731,083.00, additional compensatory damages of \$670,870.00 related to death benefit losses and punitive damages.

Respondent requested denial of the Statement of Claim in its entirety, expungement of this matter from the Central Registration Depository records of non-party Richard Hartnett and judgment in favor of Respondent.

OTHER ISSUES CONSIDERED AND DECIDED

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

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, 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 and shall pay to Claimant compensatory damages in the sum of \$150,000.00.
2. Respondent is liable and shall pay to Claimant the sum of \$250.00 representing reimbursement of the non-refundable portion of the claim filing fee previously paid by Claimant to FINRA Dispute Resolution.
3. Any and all claims for relief not specifically addressed herein, including Claimant's requests for attorneys' fees and punitive damages and Respondent's request for expungement, are denied.

FEES

Pursuant to the Code of Arbitration Procedure, 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, Respondent is assessed the following:

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

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 a single arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: February 25, 2014	1 session
One (1) Pre-hearing session with the Panel @ \$1,000.00/session	= \$ 1,000.00
Pre-hearing conference: May 2, 2013	1 session
Six (6) Hearing sessions @ \$1,000.00/session	= \$ 6,000.00
Hearing Dates: April 2, 2014	2 sessions
April 3, 2014	2 sessions
April 4, 2014	2 sessions
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Total Hearing Session Fees	= \$ 7,450.00

The Panel has assessed the total hearing session fees of \$7,450.00 to Respondent.

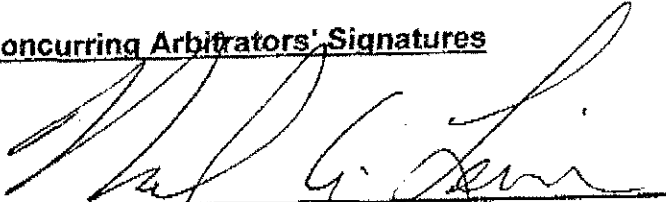
All balances are payable to FINRA Dispute Resolution and are due upon receipt.

ARBITRATION PANEL

Michael A. Levin	-	Public Arbitrator, Presiding Chairperson
Ellen J. Abrams	-	Public Arbitrator
Paul J. Burkhart	-	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



Michael A. Levin
Public Arbitrator, Presiding Chairperson

4-9-14
Signature Date

Ellen J. Abrams
Public Arbitrator

Signature Date

Paul J. Burkhart
Public Arbitrator

Signature Date

4/10/14

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

ARBITRATION PANEL

Michael A. Levin	-	Public Arbitrator, Presiding Chairperson
Ellen J. Abrams	-	Public Arbitrator
Paul J. Burkhart	-	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

Michael A. Levin
Public Arbitrator, Presiding Chairperson

Signature Date



April 8, 2014

Ellen J. Abrams
Public Arbitrator

Paul J. Burkhart
Public Arbitrator

Signature Date

4/10/14

Date of Award (or other appropriate date if not award) (MM/DD/YY)

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Ellen J. Abrams	-	Public Arbitrator
Paul J. Burkhart	-	Public Arbitrator

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Public Arbitrator, Presiding Chairperson

Signature Date

Ellen J. Abrams
Public Arbitrator

Signature Date

Paul J. Burkhart
Public Arbitrator

Signature Date

4/10/14

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