

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimants

Janet E. Russ, individually and on behalf of the
Janet E. Russ Trust and IRAs

Case Number: 16-02368

vs.

Respondent

Morgan Stanley Smith Barney, LLC

Hearing Site: Phoenix, Arizona

Nature of the Dispute: Customers vs. Member

REPRESENTATION OF PARTIES

For Claimants Janet E. Russ, individually and on behalf of the Janet E. Russ Trust and IRAs ("Claimant"): Bruce R. Heurlin, Esq., Law Firm of Heurlin Sherlock, Tucson, Arizona.

For Respondent Morgan Stanley Smith Barney, LLC ("Respondent"): Debra V. Achkire, Esq., Morgan Stanley Wealth Management, San Francisco, California.

*FINRA recorded the appearance of Claimant's counsel at the time of filing of the Statement of Claim. The counsel's representation of the Claimant may have ended with the parties' settlement. Please see the Other Issues Considered and Decided section of this award for information on whether Claimant's counsel appeared at the expungement hearing.

CASE INFORMATION

Statement of Claim filed on or about: August 11, 2016.
Claimant signed the Submission Agreement: August 11, 2016.

Statement of Answer filed by Respondent on or about: November 4, 2016.
Respondent signed the Submission Agreement: November 11, 2016.

CASE SUMMARY

Claimant asserted the following causes of action: negligence; fraud; financial elder abuse; respondeat superior liability; and control person liability. The causes of action relate to Claimant's investment in equities, oil and gas, and other unspecified investments.

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, Claimant requested:

1. Damages in an amount to be proven, but for not less than \$95,000.00, plus liquidated interest and damages pursuant to “financial elder abuse” laws;
2. Damages to make Claimant whole, based on the earnings of a suitable portfolio for a widowed, single person, on Social Security, in a profitable market;
3. Disgorgement of commissions and other charges paid to Respondent;
4. Punitive damages;
5. Costs and expenses, including reasonable attorneys’ fees;
6. Interest and costs pursuant to applicable law;
7. Referral to FINRA for disciplinary proceedings; and
8. Such other and further relief as the Arbitrator deems just and equitable.

In the Statement of Answer Respondent requested:

1. Denial of Claimant’s claim;
2. Entry of an award in favor of Respondent;
3. Expungement of this matter from the Central Registration Depository (“CRD”) record of unnamed party Travis Kent Dillard (CRD #1741428) (“Dillard”); and
4. Such further relief as the Arbitrator deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator acknowledges that he has read the pleadings and other materials filed by the parties.

On April 7, 2017, Claimant notified FINRA Office of Dispute Resolution that the matter settled.

On May 3, 2017, Respondent filed a motion for expungement for unnamed party Dillard. Claimant did not file a response.

The Arbitrator conducted a recorded telephonic hearing on July 5, 2017 so the parties could present oral argument and evidence on Respondent’s request for expungement for unnamed party Dillard. Neither Claimant nor her counsel participated in the expungement hearing and did not contest the request for expungement.

The Arbitrator reviewed the BrokerCheck® Report for unnamed party Dillard and the settlement documents, considered the amount of payments made to any party, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on Claimant not opposing the request for expungement. The Arbitrator also noted unnamed party Dillard did not contribute to the settlement amount.

The Arbitrator noted that unnamed party Dillard did not previously file a claim requesting expungement of the same disclosure in the CRD.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: in opening the account, Claimant reported experience in the stock market (Ex. 3.3); her individual and IRA accounts were non-discretionary (Ex. 3.1, 4.1); her account profile for all accounts lists growth as her primary objective (Ex. 3.2, 4.2, 5.3, 6.2); she consistently made withdrawals (Ex. 6.10); when she returned to Morgan Stanley, Dillard's firm when she first met him, she again listed growth, not conservative investments, as her primary objective (ex. 10.1, 10.2); Dillard confirmed that she approved of the investments made, as her accounts were non-discretionary; and Dillard also confirmed that he made no contribution to the settlement with Claimant.

AWARD

After considering the pleadings, the testimony and evidence presented at the expungement hearing, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

The Arbitrator recommends the expungement of all references to the above-captioned arbitration from registration records maintained by the CRD, for unnamed party Travis Kent Dillard (CRD #1741428), with the understanding that, pursuant to Notice to Members 04-16, unnamed party Travis Kent Dillard must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 12805 of the Code, the Arbitrator has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; and

The claim, allegation, or information is false.

The Arbitrator has made the above Rule 2080 findings based on the following reasons:

The expungement motion stated that there was evidence to recommend expunging the underlying proceeding from Dillard's CRD (Occurrence #1896928) on all three grounds in Rule 2080(b)(1). There was no response from Claimant and she did not appear. The Arbitrator determined that the claims were erroneous and false.

Claimant, despite her pleadings to the contrary, was a sophisticated investor. She listed her investment objective as capital appreciation, with a secondary objective of income. Throughout, she never changed from a growth and income strategy. Her account was non-discretionary and she approved everything that Dillard did on her behalf. Her frequent withdrawals from her account lessened the number of shares she held, keeping her from regaining all she had lost. She followed Dillard when he

changed companies and, when the new company did not have convenient ATMs, she switched back. This is not consistent with an aggrieved investor. The investments were appropriate.

FEES

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

Filing Fees

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

Initial Claim Filing Fee	= \$975.00
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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, Morgan Stanley Smith Barney, LLC is assessed the following:

Member Surcharge	= \$1,100.00
Member Process Fee	= \$2,250.00

Hearing Session Fees and Assessments

The Arbitrator 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: January 6, 2017	1 session

One (1) hearing session on expungement request @ \$450.00/session	= \$450.00
Hearing Date: July 5, 2017	1 session

Total Hearing Session Fees	= \$900.00
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1. The Arbitrator has assessed \$225.00 of the hearing session fees to Claimant.
2. The Arbitrator has assessed \$675.00 of the hearing session fees to Respondent.

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

ARBITRATOR

Walter Steven Schwartz

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Sole 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.

Arbitrator's Signature

/s/ Walter S. Schwartz

Walter Steven Schwartz
Sole Public Arbitrator

07/26/2017

Signature Date

July 28, 2017

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