

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimants

John E. Gherty and
M. Anne Gherty

Case Number: 17-00990

vs.

Respondents/Cross-Respondents

Morgan Stanley Smith Barney LLC and
Morgan Stanley & Company LLC

Hearing Site: Minneapolis, Minnesota

vs.

Respondent/Cross-Claimant

Randall Lee Johnson

Nature of the Dispute: Customers vs. Members and Associated Person vs. Members

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimants John E. Gherty, and M. Anne Gherty (“Claimants”): Matthew T. Boos, Esq., and Ryan C. Young, Esq., Fredrikson & Byron, P.A., Minneapolis, Minnesota.

For Respondents Morgan Stanley Smith Barney LLC (“MSSB”), and Morgan Stanley & Company LLC (“MSC”) (collectively “Morgan Stanley”): Joseph A. Sack, Esq., Morgan Stanley, New York, New York.

For Respondent Randall Lee Johnson (“Johnson”): Joseph W. Anthony, Esq., and Steven M. Phillips, Esq., Anthony Ostlund Baer & Louwagie P.A., Minneapolis, Minnesota.

CASE INFORMATION

Statement of Claim filed on or about: April 17, 2017.

Claimants signed the Submission Agreement: April 14, 2017.

Statement of Answer filed by Morgan Stanley on or about: June 28, 2017.

Statement of Answer to Cross-Claim filed by Morgan Stanley on or about: July 5, 2017.

MSSB signed the Submission Agreement: June 28, 2017.

MSC signed the Submission Agreement: June 28, 2017.

Statement of Answer and Cross Claim filed by Johnson on or about June 28, 2017.

Johnson signed the Submission Agreement: June 27, 2017.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: breach of fiduciary duty under common law and statutory law, negligence and negligent supervision, misrepresentation/omission, negligent misrepresentation, securities fraud, violation of Minn. Stat. §325F.69 (Consumer Fraud Act), violation of Minn. Stat. §325F.71 (Senior Citizens and Disabled Persons), and respondeat superior/agency/joint and several liability. The causes of action relate to Claimants' allegations that Johnson advised Claimants to invest in various oil-related investments, including Voyager Oil & Gas (formerly known as Plains Energy Investment, Inc.), Southern Plains Resources, and Northern Oil & Gas, without informing Claimants that certain recommended securities were not covered and researched by Morgan Stanley and that Johnson had material conflicts of interest in connection with his recommendations. Claimants further alleged that, after Johnson was terminated from Morgan Stanley, Claimants reasonably believed all of their equities, including the oil investments, were being managed by Morgan Stanley and did not know otherwise until Morgan Stanley told Claimants that was not the circumstance after the oil investments lost most of their value.

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

Unless specifically admitted in his Statement of Answer and Cross-Claim, Johnson denied the allegations made in the Statement of Claim and asserted various affirmative defenses. Johnson further asserted the following causes of action: declaratory judgement, common law fraud/misrepresentation, negligence, negligent misrepresentation, conversion, and unjust enrichment. The causes of action relate to Johnson's allegation that, at all relevant times, he was acting within the course and scope of his employment with Morgan Stanley and, therefore, Morgan Stanley is obligated to defend and indemnify him against the claims advanced against him by Claimants.

Unless specifically admitted in its Statement of Answer to Cross-Claim, Morgan Stanley denied the allegations made in the Cross-Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested compensatory damages in an amount to be proven at the hearing but believed to be in excess of \$1,000,000.00; damages under Minn. Stat. §325F.71; damages under Minn. Stat. Ch. 80A; pre-award interest of 10% under Minn. Stat. §549.09(1)(b)&(c)(2) from the date of the notice of a claim on compensatory damages awarded; attorneys' fees, disbursements, expenses incurred in pursuing this arbitration, and costs of investigation under Minn. Stat. §325F.71(4), Minn. Stat. §8.31, subd. 3a, and other applicable laws; and for such other relief as the Arbitrators deem just and equitable.

In their Statement of Answer, Morgan Stanley requested Claimants' claims be dismissed in their entirety and stated that Claimants' are not entitled to attorneys' fees, interest, or punitive damages.

In his Statement of Answer and Cross-Claim, Johnson requested all claims asserted against him be denied in their entirety; a declaration that he is entitled to reimbursement by Morgan Stanley for his attorneys' fees, costs, and disbursements in defending against the claims in this matter and bringing his cross-claims and/or a declaration that Morgan Stanley is responsible to pay for his defense of the claims and that the firm must indemnify him relative to all such claims; compensatory damages in an amount to be determined at the hearing; punitive damages in an amount sufficient to send a message to Morgan Stanley and to deter future abuses; against both Claimants and Morgan Stanley, reasonable attorneys' fees; pre-award and post-award interest on all damages awarded; his costs, disbursements, and expenses incurred in defending against Claimants' claims and pursuing his cross-claims, including expert witness fees and FINRA fees; and such other and further relief as the Arbitrators deem just and equitable.

In their Statement of Answer to Cross-Claim, Morgan Stanley requested Johnson's cross-claims be dismissed as a matter of Delaware law.

On record at the hearing, Claimants requested \$1,217,859.00 in compensatory damages.

On record at the hearing, in accordance with his Statement of Answer and Cross-Claim, Johnson specified that he was requesting \$138,344.25 in attorneys' fees and \$2,069.78 in costs, which were incurred prior to the withdrawal of Claimants' claims against him; \$35,908.25 in attorneys' fees, which were incurred after the withdrawal of Claimants' claims against him; \$5,850 in attorneys' fees, which were incurred on the day of the final argument (July 10, 2018); and \$18,000.00 in interest.

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 March 2, 2018, Johnson filed a Motion to Dismiss pursuant to FINRA Rule 12504 of the Code of Arbitration Procedure ("Code"). On or about March 5, 2018, Morgan Stanley filed a response to join in Johnson's Motion to Dismiss. On or about April 13, 2018, the Claimants and Johnson notified FINRA of an agreement to extend the deadline to respond to Johnson's Motion to Dismiss. On or about April 25, 2018, Morgan Stanley filed a request for the Arbitrators to grant its Motion to Dismiss. On or about April 26, 2018, Claimants filed a response to Morgan Stanley's April 25, 2018 request. On or about May 14, 2018, Claimants filed a Stipulation with Respect to Motion to Dismiss, which resolved all issues raised in Johnson's and Morgan Stanley's Motions to Dismiss.

On or about May 15, 2018, Claimants withdrew their claims against Johnson.

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 the evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims against MSSB and MSC are denied.
2. MSSB and MSC are jointly and severally liable for and shall pay to Johnson the sum of \$140,414.03 in compensatory damages pursuant to Minn. Stat. §181.970, which includes \$138,344.25 in attorneys' fees and \$2,069.78 in costs incurred prior to Claimants' withdrawal of claims against Johnson.
3. MSSB and MSC are jointly and severally liable for and shall pay to Johnson interest on the above-stated sum at the rate of 10% per annum from July 10, 2018 through the date upon which payment is made.
4. MSSB and MSC are jointly and severally liable for and shall pay to Johnson the sum of \$10,000.00 in punitive damages pursuant to Minn. Stat. §549.20.
5. Any and all claims for relief not specifically addressed herein are denied.

FEES

Pursuant to 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	=\$ 2,000.00
Cross Claim Filing Fee	=\$ 2,000.00

**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 firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party Morgan Stanley is assessed the following:

Member Surcharge	=\$ 6,050.00
Member Process Fee	=\$ 12,350.00

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 @ \$1,400.00/session = \$ 1,400.00
Pre-hearing conferences: August 29, 2017 1 session

One (1) pre-hearing session with one arbitrator @ \$450.00/session = \$ 450.00
Pre-hearing conferences: April 17, 2018 1 session

Nine (9) hearing sessions with the Panel @ \$1,400.00/session = \$ 12,600.00
Hearing Dates: June 05, 2018 2 sessions
June 06, 2018 2 sessions
June 07, 2018 2 sessions
June 08, 2018 2 sessions
July 10, 2018 1 session

Total Hearing Session Fees = \$ 14,450.00

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

The Panel has assessed \$700.00 of the hearing session fees jointly and severally to MSSB, MSC, and Johnson.

The Panel has assessed \$3,375.00 of the hearing session fees jointly and severally to MSSB and MSC.

The Panel has assessed \$3,150.00 of the hearing session fees to Johnson.

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

ARBITRATION PANEL

Steven M. Bialick	-	Public Arbitrator, Presiding Chairperson
Kerry C. Koep	-	Public Arbitrator
Gregory John Peterson	-	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



Steven M. Bialick
Public Arbitrator, Presiding Chairperson

8/7/2018

Signature Date

Kerry C. Koep
Public Arbitrator

Signature Date

Gregory John Peterson
Public Arbitrator

Signature Date

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

ARBITRATION PANEL

Steven M. Bialick	-	Public Arbitrator, Presiding Chairperson
Kerry C. Koep	-	Public Arbitrator
Gregory John Peterson	-	Public Arbitrator

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Concurring Arbitrators' Signatures

Steven M. Bialick
Public Arbitrator, Presiding Chairperson

Signature Date



Kerry C. Koep
Public Arbitrator

8/8/18

Signature Date

Gregory John Peterson
Public Arbitrator

Signature Date

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

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Kerry C. Koep	-	Public Arbitrator
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Steven M. Bialick
Public Arbitrator, Presiding Chairperson

8/7/2018

Signature Date

Kerry C. Koep
Public Arbitrator

Signature Date



Gregory John Peterson
Public Arbitrator

8/8/18

Signature Date

August 08, 2018

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