

**Award**  
**FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimant

Case Number: 10-00119

Respondents

Hearing Site: Birmingham, Alabama

Morgan Stanley & Co. Incorporated  
Morgan Stanley Smith Barney  
Ryan Hamm

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Nature of the Dispute: Customer vs. Member and Associated Person.

**REPRESENTATION OF PARTIES**

For \_\_\_\_\_, hereinafter referred to as "Claimant": **J. Gusty Yearout, Esq.** and **Jason L. Yearout, Esq., Yearout & Traylor, PC**, Birmingham, Alabama.

For Morgan Stanley & Co. Incorporated (Morgan Stanley"), Morgan Stanley Smith Barney ("MSSB") and Ryan Hamm ("Hamm"), hereinafter collectively referred to as "Respondents": Brian C. Hale, Esq., Morgan Stanley Smith Barney, Tampa, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: January 5, 2010.

Claimant signed the Submission Agreement: January 5, 2010.

Statement of Answer filed by Respondents on or about: March 22, 2010.

Respondent Hamm signed the Submission Agreement: February 25, 2010.

Respondent Morgan Stanley signed the Submission Agreement: March 22, 2010.

Respondent MSSB signed the Submission Agreement: October 5, 2010.

**CASE SUMMARY**

Claimant asserted the following causes of action: 1) breach of fiduciary duty; 2) fraud and suppression; 3) breach of contract; 4) negligence and/or wantonness; and, 5) unsuitability. The causes of action relate to Respondents' alleged failure to follow the directions of Claimant regarding various unspecified money market accounts.

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

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested an unspecified amount of compensatory damages, a complete accounting of the management of the accounts, attorneys' fees, interest, costs, punitive damages, consequential and incidental damages and such

other relief as this Panel deemed just and proper.

At the close of the hearing, Claimant requested compensatory damages in the amount of \$356,703.00

In their Statement of Answer, Respondents requested that the Panel deny Claimant's claim in its entirety and assess all costs and fees against Claimant. In addition, Respondents requested that this matter be expunged from the Central Registration Depository (the "CRD") record of Respondent Hamm.

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

The Panel acknowledges that they have each read the pleadings and other materials filed by the parties.

On August 5, 2010, during the Initial Pre-hearing Conference call, there was a discussion of the "fictitious Respondent" that was named in the Statement of Claim. In order to simplify the issue, Respondents recommended that they stipulate that for part of the time period at issue, Claimant's account was held at MSSB and that MSSB may be added as a Respondent to this arbitration. Claimant agreed to the stipulation and the panel granted the parties' stipulation.

During the final hearing, Claimant partially withdrew her claim for unsuitability. Additionally, at the conclusion of Claimant's case-in-chief, Respondent asserted a Motion to Dismiss all claims alleging, among other things, that Claimant failed to prove her case, and requested that all costs be assigned to Claimant. Respondents also reiterated their request for expungement of the CRD record of Respondent Hamm. After hearing oral argument from the parties, the Panel subsequently denied the Motion to Dismiss and the request for expungement.

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:

**Respondents Morgan Stanley, MSSB and Hamm are found jointly and severally liable and shall pay to Claimant compensatory damages in the amount of \$190,000.00, pre-judgment interest specifically denied.**

Claimant's requests for punitive damages and attorney's fees are denied.

Respondent Hamm's request for expungement of his CRD record is denied.

Any and all claims for relief not specifically addressed herein are denied.

### **FEES**

Pursuant to the Code of Arbitration Procedure (the "Code"), 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, Respondent Morgan Stanley is a party and a member firm.

Member surcharge = \$1,500.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$2,200.00

Respondent MSSB is a party and a member firm.

Member surcharge = \$1,500.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$2,200.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

March 29 – April 1, 2011, adjournment requested by Claimant = \$1,000.00

The Panel has assessed the total adjournment fee in the amount of \$1,000.00 to Claimant.

#### **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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with the Panel @ \$1,000.00/session = \$1,000.00  
Pre-hearing conference: August 5, 2010 1 session

Six (6) Hearing sessions @ \$1,000.00/session = \$ 6,000.00  
Hearing Dates: September 13, 2011 2 sessions  
September 14, 2011 2 sessions  
September 15, 2011 2 sessions

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Total Hearing Session Fees = \$7,000.00

The Panel has assessed \$3,500.00 of the hearing session fees to Claimant.

The Panel has assessed \$3,500.00 of the hearing session fees jointly and severally to Respondents.

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

**ARBITRATION PANEL**

*Donald Helton* - *Public Arbitrator, Presiding Chairperson*  
*Debra Leo Black* - *Public Arbitrator*  
*Laree Payne Kennedy* - *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 Helton  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Debra Leo Black  
Public Arbitrator

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

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Laree Payne Kennedy  
Non-Public Arbitrator

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

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Date of Service (For FINRA Dispute Resolution use only)

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9/19/11  
Signature Date

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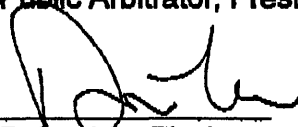
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