

**Award
FINRA Dispute Resolution**

In the Matter of the Arbitration Between:

Claimants
Estate of Margaret Cwirko

Case Number: 09-06320

vs.

Respondents
Morgan Stanley & Co., Incorporated

Hearing Site: Newark, New Jersey

Nature of the Dispute: Customer vs. Member

REPRESENTATION OF PARTIES

Claimant Estate of Margaret Cwirko, hereinafter referred to as "Claimant": David R. Strickler, Esq., and Robert Mahoney, Esq., Norris McLaughlin & Marcus PA, Bridgewater, NJ.

Respondent Morgan Stanley Smith Barney: John Castelly, Esq., Morgan Stanley Smith Barney, Purchase, NY.

CASE INFORMATION

Statement of Claim filed on or about: November 5, 2009.
Claimant signed the Submission Agreement: October 28, 2009.

Statement of Answer filed by Morgan Stanley Smith Barney on or about: January 12, 2010.
Morgan Stanley signed the Submission Agreement: January 11, 2010.

CASE SUMMARY

Claimant asserted the following causes of action: negligence and breach of fiduciary duty. The causes of action relate to unspecified corporate bonds and securities.

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

RELIEF REQUESTED

In the Statement of Claim, Claimant requested compensatory damages in the amount of \$700,000.00, unspecified punitive damages, and costs.

At the close of the hearing, Claimant requested compensatory damages in the range of \$1,063,425.37 to \$1,305,502.21 inclusive of interest, attorneys' fees, and expert witness fees.

Morgan Stanley Smith Barney requested dismissal of the Statement of Claim, costs and expenses, expungement of this arbitration from unnamed party Gregory Stephenson's CRD record, and for such other and further relief that the Panel may award.

OTHER ISSUES CONSIDERED AND DECIDED

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

At the hearing, Morgan Stanley Smith Barney moved for a directed verdict and Claimant opposed the Motion. After due deliberation, the Panel determined to deny the Motion.

At the hearing the parties agreed to substitute Morgan Stanley Smith Barney (CRD #149777) with Morgan Stanley & Co., Incorporated (CRD # 8209). The Panel granted the parties' request.

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:

1. Morgan Stanley & Co., Incorporated is liable for and shall pay to Claimant compensatory damages inclusive of interest in the amount of \$241,344.00.
2. Morgan Stanley & Co., Incorporated expungement request on behalf of unnamed party Gregory Stephenson is denied.
3. Any and all relief not specifically addressed herein, including punitive damages, is denied.

FEEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee = \$1,575.00

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

Member surcharge	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$4,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

November 16, 17, 18, 2010 and December 7, 8, 9, 2010, adjournment by all parties
= \$1,200.00

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 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 @ \$1,200.00/session	= \$ 1,200.00
Pre-hearing conference: April 7, 2010 1 session	
Eleven (11) Hearing sessions @ \$1,200.00/session	= \$13,200.00
Hearing Dates: October 3, 2011 2 sessions	
October 4, 2011 2 sessions	
October 5, 2011 2 sessions	
October 6, 2011 2 sessions	
October 7, 2011 2 sessions	
October 11, 2011 1 session	
Total Hearing Session Fees	= \$14,400.00

The Panel has assessed \$7,200.00 of the hearing session fees to Claimant.
The Panel has assessed \$7,200.00 of the hearing session fees to Morgan Stanley & Co., Incorporated.


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

ARBITRATION PANEL

Edward W. Morris, Jr.	-	Public Arbitrator, Presiding Chairperson
Dwight Wassong	-	Public Arbitrator
Joseph Christopher Rosa	-	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



Edward W. Morris, Jr.
Public Arbitrator, Presiding Chairperson



Signature Date

Dwight Wassong
Public Arbitrator

Signature Date

Joseph Christopher Rosa
Non-Public Arbitrator

Signature Date

October 31, 2011

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

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Joseph Christopher Rosa	-	Non-Public Arbitrator

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Edward W. Morris, Jr.
Public Arbitrator, Presiding Chairperson

Signature Date

Dwight Wassong

Dwight Wassong
Public Arbitrator

10/16/11

Signature Date

Joseph Christopher Rosa
Non-Public Arbitrator

Signature Date

October 31, 2011

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Public Arbitrator, Presiding Chairperson

Signature Date

Dwight Wassong
Public Arbitrator

Signature Date



Joseph Christopher Rosa
Non-Public Arbitrator

10/12/11

Signature Date

October 31, 2011

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