

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Morgan Stanley
MSSB Financing LLC

Case Number: 20-02339

vs.

Respondent

Damian Mark Baird

Hearing Site: Buffalo, New York

Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

Nature of the Dispute: Member and Non-Member vs. Associated Person

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimants Morgan Stanley, and MSSB Financing LLC (“Claimants”) Samuel P. Mauch, Esq., and Samuel N. Kopmar, Esq., Saretsky Hart Michaels & Gould PC, Birmingham, Michigan.

Respondent Damian Mark Baird (“Respondent”) appeared pro se.

CASE INFORMATION

Statement of Claim filed on or about: July 23, 2020.

Amended Statement of Claim filed on or about: May 7, 2021.

Answer to Counterclaim filed on or about: December 10, 2020.

Morgan Stanley signed the Submission Agreement: July 23, 2020.

MSSB Financing LLC signed the Submission Agreement: July 24, 2022.

Statement of Answer and Counterclaim filed by Respondent on or about: October 23, 2020.

Damian Mark Baird signed the Submission Agreement: November 3, 2020.

CASE SUMMARY

In the Statement of Claim, as amended, Claimants asserted the following cause of action: breach of promissory notes.

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

In the Counterclaim, Respondent asserted the following causes of action: fraudulent inducement; tortious interference with prospective business expectancy; defamation; false light; wrongful discharge; promissory/equitable estoppel; and negligent violation of FINRA Rules.

Unless specifically admitted in the Answer to the Counterclaim, Claimant Morgan Stanley denied the allegations made in the Counterclaim and asserted various affirmative defenses

RELIEF REQUESTED

In the Statement of Claim, Claimant Morgan Stanley requested an award of \$627,777.76 principal balance due and owing under Note 1; \$10,312.88 accrued interest under Note 1; per diem interest of \$124.70 between May 19, 2020 (the date Respondent's employment terminated) and the date of payment of Note 1; \$186,812.50 principal balance due and owing under Note 2; \$2,021.25 accrued interest under Note 2; per diem interest of \$35.83 between May 19, 2020 and the date of payment of Note 2; \$61,000.00 principal balance due and owing under Note 3; \$309.17 accrued interest under Note 3; per diem interest of \$9.61 between May 19, 2020 and the date of payment of Note 3; and costs of collection and of this proceeding, including reasonable attorneys' fees.

In the Statement of Answer and Counterclaim, Respondent requested an award denying Claimant's request for relief and that Claimant take nothing; compensatory damages in an amount in excess of \$1,000,000.00; punitive damages; attorneys' fees and costs; reformation of Respondent's Form U5 disclosure to reflect an accurate description of his separation from Morgan Stanley; as well as such other relief as the Panel may deem just and proper.

In the Answer to the Counterclaim, Claimant Morgan Stanley requested that the Counterclaim be dismissed in its entirety and award Morgan Stanley the principal balance due and owing on the Notes, per diem interest, and costs of collection and of this proceeding, including reasonable attorneys' fees, all as provided for in the Notes.

In the Amended Statement of Claim, Claimants requested an award of \$627,777.76 principal balance due and owing under Note 1; \$10,312.88 accrued interest under Note 1; per diem interest of \$124.70 between May 19, 2020 (the date Respondent's employment terminated) and the date of payment of Note 1; \$186,812.50 principal balance due and owing under Note 2; \$2,021.25 accrued interest under Note 2; per diem interest of \$35.83 between May 19, 2020 and the date of payment of Note 2; \$61,000.00 principal balance due and owing under Note 3; \$309.17 accrued interest under Note 3; per diem interest of \$9.61 between May 19, 2020 and the date of payment of Note 3; and costs of collection and of this proceeding, including reasonable attorneys' fees.

At the hearing, Claimants' damage request was updated to reflect interest that has accrued since the initial Statement of Claim.

OTHER ISSUES CONSIDERED AND DECIDED

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

Respondent Damian Mark Baird did not appear at the evidentiary hearing. Upon review of the file, the Panel determined that Respondent Damian Mark Baird received due notice of the hearing and that arbitration of the matter would proceed without Respondent Damian Mark Baird present, in accordance with the Code.

On May 7, 2021, Claimant Morgan Stanley filed a Notice of Note Assignment and Motion to Add Party Claimant. Respondent did not file a response. By Order dated May 26, 2021, the Panel ordered that, subject to all available and applicable defenses, MSSB Financing LLC is added as a Claimant to this proceeding.

On June 21, 2022, Claimants filed a Motion to Compel to which no response was received. On August 3, 2022, the Chairperson heard oral arguments on the Motion to Compel and on the same day ordered Respondent to produce all discovery materials Claimants requested in the Motion to Compel by August 18, 2022.

On July 22, 2022, Claimants filed an Emergency Motion to Preclude Respondent from Presenting any witnesses or Additional Documents at the Arbitration Hearing. Respondent did not file a response. On August 2, 2022, Claimants filed a Reply in Support of their Emergency Motion to Preclude.

On August 22, 2022, Claimants filed a Motion to Enforce the Chairperson's August 3, 2022 Order and for Sanctions. Respondent did not file a response. On September 2, 2022, Claimants filed a Reply in Support of their Motion to Enforce the Chairperson's Order and for Sanctions.

On September 29, 2022, the Panel heard oral arguments on the above pending motions. On the day of the oral arguments, Respondent requested that the pre-hearing conference be postponed shortly before the scheduled time. Respondent failed to appear and was not represented by counsel.

On October 3, 2022, the Panel issued an Order stating that: Respondent failed to provide exhibits or other documents and a witness list in accordance with FINRA Rule 13514(a) and (b) at least 20 days prior to the scheduled evidentiary hearing dates of August 9-12, 2022 (The evidentiary hearing was postponed at Respondent's request to acquire new counsel). Respondent's failure places Claimants at a severe disadvantage because Respondent has the benefit of viewing Claimants' witness list and exhibits prior to the evidentiary hearing while Claimants do not have an equal opportunity to review Respondent's witnesses or exhibits. Consequently, pursuant to FINRA Rule 13514(c), Claimants' Motion dated July 22, 2022, to preclude Respondent from presenting documents and witnesses in opposition to Claimants' Statement of Claim at the evidentiary hearing is hereby granted.

Respondent failed to comply with the Panel's order dated August 3, 2022, that compelled discovery of items requested in Claimants' Motion to Compel dated June 21, 2022. Pursuant to FINRA Rules 13511(b) and 13212(c), Respondent's Counterclaim is hereby dismissed with prejudice.

Pursuant to FINRA Rule 13212(a), the Panel has drawn an adverse inference from Respondent's failure to comply with the Panel's Discovery Order. Due to Respondent's failure to comply with the Panel's Discovery Order dated August 3, 2022, and pursuant to FINRA Rule 13212(a), the Panel hereby levies a fine of \$10,000.00 on Respondent to be paid to Claimants prior to Respondent's continued participation in these proceedings.

The Award in this matter may be executed in counterpart copies.

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. Respondent is liable for and shall pay to Claimants the sum of \$875,590.28 in compensatory damages.
2. Respondent is liable for and shall pay to Claimants accrued interest in the amount of \$176,991.03.
3. Respondent is liable for and shall pay to Claimants interest at the rate of \$170.13 per day from January 10, 2023, through and including the date the award is paid in full.
4. Respondent is liable for and shall pay to Claimants the sum of \$10,222.19 in costs.
5. Respondent is liable for and shall pay to Claimants the sum of \$142,025.11 in attorneys' fees pursuant to the terms of the three separate promissory notes, and the New York Court of Appeal's authority that permits the award of attorney's fees as cited by Claimants.
6. As per the Panel's October 3, 2022, Order, Respondent is liable for and shall pay to Claimants \$10,000.00 as a discovery sanction.
7. Respondent's Counterclaim is dismissed with prejudice by Order of the Panel dated October 3, 2022.
8. Respondent is liable for and shall pay to Claimants \$1,250.00 to reimburse Claimants for the non-refundable portion of the filing fee previously paid to FINRA Dispute Resolution Services.
9. Any and all claims for relief not specifically addressed herein are denied.

FEES

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

Filing Fees

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

Initial Claim Filing Fee	= \$ 2,550.00
Counterclaim 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 firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Claimant Morgan Stanley is assessed the following:

Member Surcharge	= \$ 2,475.00
Member Process Fee	= \$ 5,075.00

Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

January 24-28, 2022, postponement requested by Respondent	= \$ 1,400.00
August 9-12, 2022, postponement requested by Claimants	= \$ 1,400.00

Total Postponement Fees	= \$ 2,800.00
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The Panel has assessed the total postponement fees to Respondent.

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, which 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: August 3, 2022	1 session

Three (3) pre-hearing sessions with the Panel @ \$1,400.00/session	= \$ 4,200.00
Pre-Hearing Conferences: February 22, 2021	1 session
May 26, 2021	1 session
September 29, 2022	1 session

One (1) hearing session @ \$1,400.00/session	= \$ 1,400.00
Hearings: January 10, 2023	1 session

Total Hearing Session Fees	= \$ 6,050.00
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The Panel has assessed the total hearing session fees to Respondent.

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

ARBITRATION PANEL

Mark A. Sipper	-	Public Arbitrator, Presiding Chairperson
Joseph Maron Hanna	-	Public Arbitrator
Alan Kenneth Scheff	-	Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

Concurring Arbitrators' Signatures

Mark A. Sipper

Mark A. Sipper
Public Arbitrator, Presiding Chairperson

01/17/2023

Signature Date

Joseph Maron Hanna

Joseph Maron Hanna
Public Arbitrator

01/17/2023

Signature Date

Alan Kenneth Scheff

Alan Kenneth Scheff
Non-Public Arbitrator

01/17/2023

Signature Date

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January 17, 2023

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