

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Lisa Drew, as Successor Trustee of the Tullio and Maria DeFilippis Joint Revocable Trust u/a/d April 18, 2013, as Personal Representative of the Estate of Tullio DeFilippis, and Individually

Case Number: 21-00833

vs.

Respondent

Morgan Stanley

Hearing Site: Boca Raton, Florida

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: Customer vs. Member

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimant Lisa Drew, as Successor Trustee of the Tullio and Maria DeFilippis Joint Revocable Trust u/a/d April 18, 2013, as Personal Representative of the Estate of Tullio DeFilippis, and Individually: Josh M. Rubens, Esq., Kluger Kaplan, Miami, Florida.

For Respondent Morgan Stanley: Joseph C. Coates, III, Esq., Greenberg Traurig, West Palm Beach, Florida.

CASE INFORMATION

Statement of Claim filed on or about: March 29, 2021.

Lisa Drew, as Successor Trustee of the Tullio and Maria DeFilippis Joint Revocable Trust u/a/d April 18, 2013, as Personal Representative of the Estate of Tullio DeFilippis, and Individually signed the Submission Agreement: March 29, 2021.

Statement of Answer and Counterclaim to Enforce Settlement Agreement filed by Respondent on or about: June 9, 2021.

Morgan Stanley signed the Submission Agreement: April 16, 2021.

Answer to Respondent's Counterclaim and Motion to Strike Inadmissible Settlement Communications and Work Product filed by Claimant on or about: July 23, 2021.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: breach of contract; negligent supervision; negligence; breach of fiduciary duty; negligent misrepresentation; fraudulent misrepresentation; violation of Florida Statutes § 415.1111; and violation of Florida Statutes §§ 825.103 and 772.11. The causes of action relate to the confessed conversion and mismanagement of assets in Claimant's account by Respondent's former associated person.

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 its Counterclaim, Respondent alleged breach of settlement agreement. The cause of action relates to the enforcement of a mediation settlement agreement between Claimant and Respondent.

In their Answer to Respondent's Counterclaim, Claimant denied the allegations made in the Counterclaim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: compensatory damages in the amount of \$1,200,000.00; an unspecified amount of punitive damages; treble damages in the amount of \$2,400,000.00; interest; attorneys' fees and costs pursuant to Florida Statutes §§ 415.1111 and 772.11; and such further relief as deemed just and proper.

In the Statement of Answer and Counterclaim, Respondent requested dismissal of Claimant's claims with prejudice, and attorneys' fees and costs incurred in enforcing the settlement and defending this arbitration.

In the Answer to Respondent's Counterclaim, Claimant requested: the denial of the Counterclaim in all respects; attorneys' fees and costs incurred; and all such further and other relief in Claimant's favor as deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

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

On July 23, 2021, Claimant filed a Motion to Strike Inadmissible Settlement Communications and Work Product, in which, among other things, she sought to strike a copy of the draft Statement of Claim that Claimant's prior counsel prepared and sent to Respondent in connection with a pre-suit demand and mediation, and correspondence with Claimant's new counsel regarding Respondent's position that the subject claims are barred by settlement. In its August 2, 2021, Response to Claimant's Motion, Respondent asserted, among other things, that reference to settlement documents is permissible for the purpose of enforcing a settlement, and that both Florida and New York law allow for emails between counsel to constitute valid settlements. On or about September 15, 2021, the Panel conducted a pre-hearing conference so the parties could present oral argument on Claimant's Motion to Strike, and, subsequently issued an Order in which it denied the Motion to Strike.

On September 1, 2021, Respondent filed a Motion to Dismiss pursuant to Rule 12504 of the Code of Arbitration Procedure ("Code"). On October 18, 2021, Claimant filed a response opposing the Motion to Dismiss. On November 17, 2021, the Panel heard oral arguments on the Motion to Dismiss. On November 19, 2021, the Panel issued an Order in which it granted the Motion to Dismiss on the following grounds:

Respondent Morgan Stanley brought its Motion to Dismiss under FINRA Rule 12504(a)(6)(A). Respondent asserts the parties previously entered into a settlement agreement at mediation, which was memorialized through material terms confirmed and accepted via an email acknowledgment by Claimant's former counsel. Claimant asserts the email signed by Claimant's counsel is not enforceable under the FINRA Rules as a written agreement and release. Upon reviewing the pleadings, FINRA regulations and opinion guidance, case law guidance, evidence and hearing oral arguments by the parties' counsel, this Panel unanimously finds the electronic signature acknowledging agreement of the material settlement terms is sufficient to enforce the mediated settlement agreement and release in this matter. The material terms set forth in the mediator's email dated December 22, 2020, provided for a settlement and release of all claims, payment of \$425,000.00, standard confidentiality provision, Morgan Stanley to pay the mediator's fee, which were accepted by Claimant and the Trust via electronic signature by Claimant through her counsel. Thus, the Panel finds there was sufficient evidence to establish a settlement of this matter between the parties.

The Panel has provided an explanation of the decision in this award. The explanation is for the information of the parties only and is not precedential in nature.

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

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and any post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are dismissed with prejudice.
2. Respondent's Counterclaim is granted. The settlement agreement entered into by the parties is hereby enforced and the parties shall comply with its terms in full, which includes Respondent Morgan Stanley making the \$425,000.00 payment to Claimant of the settlement amount in exchange for a full release of all claims in accordance with those material terms.
3. This Panel further finds that each party acted in good faith in pursuit of these issues, and as such, each party shall bear their own fees and costs in this matter.
4. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, treble damages, and attorneys' fees, are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial Claim Filing Fee	= \$ 2,000.00
Counterclaim Filing Fee	= \$ 1,700.00

*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, as a party, Respondent Morgan Stanley is assessed the following:

Member Surcharge	= \$ 3,025.00
Member Process Fee	= \$ 6,175.00

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), which lasts four (4) hours or less. Fees associated with these proceedings are:

Four (4) pre-hearing sessions with the Panel @ \$1,400.00/session	= \$ 5,600.00
Pre-Hearing Conferences: July 19, 2021	1 session
September 15, 2021	1 session
November 4, 2021	1 session
November 17, 2021	1 session

Total Hearing Session Fees	= \$ 5,600.00
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The Panel has assessed \$2,100.00 of the hearing session fees to Claimant.

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

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

ARBITRATION PANEL

Erika Deutsch Rotbart	-	Public Arbitrator, Presiding Chairperson
Erika-Rae M Harvey	-	Public Arbitrator
Christopher William Pole	-	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

Erika Deutsch Rotbart

Erika Deutsch Rotbart
Public Arbitrator, Presiding Chairperson

12/02/2021

Signature Date

Erika-Rae M Harvey

Erika-Rae M Harvey
Public Arbitrator

12/02/2021

Signature Date

Christopher William Pole

Christopher William Pole
Public Arbitrator

12/02/2021

Signature Date

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December 02, 2021

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