

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimants

Alan Deutsch A/C/F for Ayelethashacha Deutsch
Alan Deutsch A/C/F for Natanel Deutsch
Alan Deutsch A/C/F for Zecharia Deutsch
Elana Deutsch
Elie Samuel Deutsch
Sonja G. Deutsch Irrevocable Trust

Case Number: 13-03704

vs.

Respondents

Morgan Stanley Smith Barney LLC
Stuart Alter
James Edward Ducey

Hearing Site: New York, New York

Nature of the Dispute: Customers vs. Member and Associated Persons

This case was decided by a majority-public panel.

REPRESENTATION OF PARTIES

For Claimants Alan Deutsch A/C/F for Ayelethashacha Deutsch, Alan Deutsch A/C/F for Natanel Deutsch, Alan Deutsch A/C/F for Zecharia Deutsch, Elana Deutsch, Elie Samuel Deutsch, and Sonja G. Deutsch Irrevocable Trust: Kevin J. Deloatch, Esq., Law Office of Kevin J. Deloatch, Esq., New York, New York.

For Respondents Morgan Stanley Smith Barney LLC ("MSSB"), Stuart Alter ("Alter"), and James Edward Ducey ("Ducey"): Adam Kauff, Esq., Kauff Laton Miller LLP, New York, New York.

*FINRA recorded the appearance of Claimants' counsel at the time of filing of the Statement of Claim. The counsel's representation of the Claimants may have ended with the parties' settlement. Please see the Other Issues Considered and Decided section of this award for information on whether Claimants' counsel appeared at the expungement hearing.

CASE INFORMATION

Statement of Claim filed on or about: December 18, 2013.

Alan Deutsch A/C/F for Ayelethashacha Deutsch signed the Submission Agreement: December 18, 2013.

Alan Deutsch A/C/F for Natanel Deutsch signed the Submission Agreement: December 18, 2013.

Alan Deutsch A/C/F for Zecharia Deutsch signed the Submission Agreement: December 18, 2013.

Elie Samuel Deutsch signed the Submission Agreement: December 18, 2013.

Elana Deutsch signed the Submission Agreement: December 18, 2013.

Sonja G. Deutsch Irrevocable Trust signed the Submission Agreement: February 13, 2014.

Statement of Answer filed by Respondents on or about: May 22, 2014.

Morgan Stanley Smith Barney LLC signed the Submission Agreement: May 22, 2014.

Stuart Alter signed the Submission Agreement: June 9, 2014.

James Edward Ducey signed the Submission Agreement: February 20, 2019.

CASE SUMMARY

Claimants asserted the following causes of action: violation of the Securities and Exchange Act of 1934, suitability, failure to supervise, unauthorized trading, breach of written contract, breach of oral contract, and negligence. The causes of action relate to various securities.

Unless specifically admitted in the 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, Claimants requested compensatory damages in the amount of \$214,647.53; punitive damages in the amount of \$643,942.59; filing fees; costs; hearing fees; and other fees.

In the Statement of Answer, Respondents requested dismissal of the Statement of Claim in its entirety and costs.

OTHER ISSUES CONSIDERED AND DECIDED

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

By correspondence dated October 4, 2019, Respondents Alter and Ducey notified FINRA Office of Dispute Resolution that this matter settled and requested a telephonic expungement hearing for expungement of this matter from their CRD records.

By correspondence dated October 8, 2019, Claimants notified FINRA Office Dispute Resolution that this matter settled in principle and that they would not be participating in the expungement hearing.

By correspondence dated October 24, 2019, Claimants notified FINRA Office of Dispute Resolution that they settled the case.

The Panel conducted a recorded telephonic hearing on February 20, 2020 so the parties could present oral argument and evidence on Respondents Alter's and Ducey's request for expungement.

Claimants did not participate in the expungement hearing and did not contest the request for expungement.

Respondent Morgan Stanley did not oppose the expungement request or participate in the expungement hearing.

The Panel reviewed the BrokerCheck® Reports for Stuart Alter and James Ducey and the settlement documents, considered the amount of payments made to the Claimants, and considered other relevant terms and conditions of the settlement. The Panel noted that the settlement was not conditioned on Claimants not opposing the request for expungement. The Panel also noted that Respondents Alter and Ducey did not contribute to the settlement amount.

The Panel noted that Respondents Alter and Ducey did not previously file claims requesting expungement of their CRD records.

In recommending expungement the Panel relied upon the following documentary or other evidence: the testimonies of Respondents Ducey (branch manager) and Alter (financial advisor), the pleadings, custodial account documents together with email correspondence and internal "Note Reports" memorializing phone calls, all evidencing extensive communication with the underlying customer concerning the customers' trading choices and decisions, the BrokerCheck® Reports for Stuart Alter and James Ducey, and the settlement documents.

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

1. The Panel recommends the expungement of all references to the above captioned arbitration from registration records maintained by the Central Registration Depository ("CRD"), for Respondent Stuart Alter (CRD# 1015597), with the understanding that, pursuant to Notice to Members 04-16, Respondent Stuart Alter must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 12805 of the Code, the Panel has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is false.

The Panel has made the above Rule 2080 finding based on the following reasons:

The claim of unauthorized trading, based on trading in improperly established custodial accounts is false. The error resulted from the customer providing inaccurate birth date information for two of his children. When Respondent Alter discovered the customer's error, the appropriate changes in the accounts were made. The claims of unsuitability, breach of contract and negligence are also false. Despite the customer's claim that he intended the accounts to be managed conservatively, the account documents indicated he chose "growth with moderate risk". Moreover, Alter's testimony together with the email notes and notes reports confirm that Alter was in daily electronic and telephonic contact with the customer, who during the 2008-2009 period of intense economic upheaval, often rejected Alter's advice and insisted on more aggressive trading, choosing to also trade on his own account and on margin, against Alter's advice. In 2009, the customer claimed he planned to close the custodial accounts, but despite Alter's numerous efforts to reach him, he never did. Except for some sporadic contact during the intervening years, Alter heard nothing further until the filing of the Statement of Claim in 2013.

2. The Panel recommends the expungement of all references to the above captioned arbitration from registration records maintained by the Central Registration Depository ("CRD"), for Respondent James Edward Ducey (CRD# 1249644), with the understanding that, pursuant to Notice to Members 04-16, Respondent James Edward Ducey must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 12805 of the Code, the Panel has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; and the claim, allegation, or information is false.

The Panel has made the above Rule 2080 findings based on the following reasons:

There is nothing in the record to indicate the customer's basis for the claim, other than its mere assertion. Further, the customer's claim that Ducey was branch manager at "all times relevant herein" is false. The accounts in question were established in January 2008 and the relevant transactions took place without complaint through October 2008; Ducey left the firm and relocated to Boston in February 2009 and although activity in the accounts continued thereafter, Ducey heard nothing further about this matter until the filing of the Statement of Claim on December 18, 2013. As to the claim of failure to supervise, the email record indicated Ducey was in fact attentive to and supervised customer's trading activities. Accordingly, the claims of failure to supervise and negligence are clearly erroneous, false, and (at least partially) factually impossible.

FEES

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

Filing Fees

FINRA Office of 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 persons at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent Morgan Stanley Smith Barney LLC is assessed the following:

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|----------------------------|---------------|
| Member Surcharge | = \$ 2,250.00 |
| Pre-Hearing Processing Fee | = \$ 750.00 |
| Hearing Processing Fee | = \$ 4,000.00 |

Postponement Fees

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

| | |
|---|---------------|
| June 15-19, 2015, postponement by Claimants | = \$ 1,200.00 |
| March 7-11, 2016, postponement by parties | = \$ 1,200.00 |
| January 30-31 and February 1-3, 2017, postponement by Respondents | = \$ 1,200.00 |
| November 6-10, 2017, postponement by parties | = \$ 1,200.00 |
| October 22-26, 2018, postponement by parties | = \$ 1,200.00 |

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|-------------------------|---------------|
| Total Postponement Fees | = \$ 6,000.00 |
|-------------------------|---------------|

The Panel has assessed \$3,600.00 of the adjournment fees jointly and severally to Claimants.

The Panel has assessed \$2,400.00 of the adjournment fees jointly and severally to Respondents.

Discovery-Related Motion Fee

Fees apply for each decision rendered on a discovery-related motion.

One (1) decision on a discovery-related motion on the papers
with three (3) arbitrators @ \$600.00 /decision = \$ 600.00

Respondents submitted one discovery-related motion

Total Discovery-Related Motion Fees = \$ 600.00

The Panel has assessed the \$600.00 discovery-related motion fees jointly and severally to Respondents.

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: July 18, 2014 1 session

One (1) hearing session on expungement request @ \$1,200.00/session = \$ 1,200.00
Hearing Date: February 20, 2020 1 session

Total Hearing Session Fees = \$ 2,400.00

The Panel has assessed \$600.00 of the hearing session fees to jointly and severally to Claimants.

The Panel has assessed \$600.00 of the hearing session fees jointly and severally to Respondents.

The Panel has assessed \$600.00 of the expungement hearing session fees to Respondent Alter.

The Panel has assessed \$600.00 of the expungement hearing session fees to Respondent Ducey.

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

ARBITRATION PANEL

| | | |
|---------------------|---|--|
| Joan M. Traub | - | Public Arbitrator, Presiding Chairperson |
| Julian F. Santos | - | Public Arbitrator |
| Daniel F. Morrissey | - | 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

Joan M. Traub

Joan M. Traub
Public Arbitrator, Presiding Chairperson

03/05/2020

Signature Date

Julian F. Santos

Julian F. Santos
Public Arbitrator

03/05/2020

Signature Date

Daniel F. Morrissey

Daniel F. Morrissey
Non-Public Arbitrator

03/06/2020

Signature Date

March 10, 2020

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