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Regional Director
Northeast Region

January 13, 2012

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Subject: FINRA Dispute Resolution Arbitration Case Number 10-01687
Morgan Stanley Smith Barney LLC, vs. Mark D. Mensack vs. Morgan Stanley
& Co., Inc., Peter Prunty and Rich Maratea

Dear Mr. Lakind:

Thank you for your December 22, 2011 letter to Todd Saltzman, Deputy Director of Case Administration, which has been referred to me for response. This is also in response to several email communications from your client, Mark D. Mensack, addressed to Mr. Saltzman and Thomas McCormack, Associate Director, Office of the Ombudsman.

In your letter, you state that the recordings from the hearings conducted in June, 2011 are missing testimony and that the arbitrators discussed their compensation in violation of the Code of Ethics for Arbitrators in Commercial Disputes. Mr. Mensack's emails raise additional issues, specifically that: 1) the arbitrators charged the parties for hearing sessions at which the parties did not appear, 2) Arbitrator Michael J. Garry discussed this case publicly with a third party, and 3) during the hearings, Claimant Morgan Stanley Smith Barney LLC (Morgan Stanley) fabricated evidence and several witnesses provided false testimony under oath.

As background, Morgan Stanley filed this arbitration against Mr. Mensack alleging breach of a promissory note. Mr. Mensack filed a counterclaim against Morgan Stanley and a third party claim against two individuals. The evidentiary hearings were held in June 2010 in Philadelphia, Pennsylvania. On July 29, 2011, the panel issued an award (copy enclosed) finding Mr. Mensack liable to Morgan Stanley and dismissing his counterclaim and third party claims. On or about September 29, 2011, Mr. Mensack filed for bankruptcy and, as a result, FINRA dismissed the suspension proceeding it had commenced pursuant to FINRA Rule 9554 in connection with Mr. Mensack's failure to pay the award.

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I apologize that portions of testimony are missing from the recordings for the June hearing sessions, and for any perceived miscommunications from the FINRA staff about the status of the recordings. FINRA is required to make a tape, digital or other recording of every hearing pursuant to Rule 10306(a) of the Code of Arbitration Procedures for Industry Disputes. For this purpose, we utilize portable digital recording devices at all hearings held outside of our FINRA Dispute Resolution offices, such as Philadelphia. We have found the quality of the recordings to be excellent, and the arbitrator feedback concerning the ease of using the equipment has been very positive.

Unfortunately, portions of testimony returned to us by the panel are missing from the recordings for the June hearing sessions. I apologize for this and for any perceived miscommunications from the FINRA staff about the status of the recordings. We spoke with the Chairperson E. William Pastor, who informed us that he operated the digital recorder during the hearings. Mr. Pastor stated that he believed that all testimony was recorded, and he was unable to explain why testimony is missing from the recordings. We listened to the recordings several times, and we tested the particular digital recorder used during the arbitration. We found the recorder to be working properly, and we have not been able to determine what caused portions of the testimony to be missing. We are taking steps to provide further guidance to our arbitrators on operating the digital recorders in order to prevent this situation from occurring again.

The award included fees for hearing sessions in July, 2011 at which only the arbitrators appeared. It is our understanding these additional sessions were scheduled upon the agreement of the parties so that the arbitrators could review additional submissions from the parties. FINRA staff was not aware that this agreement had been reached and that the sessions were not attended by the parties. In light of the unusual nature of this arrangement, we have decided to waive the fees assessed in connection with these hearing sessions.

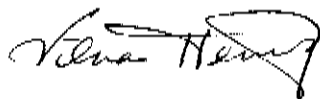
Mr. Mensack has alleged that Arbitrator Michael J. Garry discussed this case with a third party after the case concluded. We spoke with Mr. Garry about this allegation. He informed us that, after the conclusion of this arbitration, he had breakfast with his accountant, who told Mr. Garry that he knows Mr. Mensack. Mr. Garry advised that he told his accountant he could not discuss Mr. Mensack with him.

We take all allegations of arbitrator misconduct very seriously. We are fully investigating all of the allegations concerning the arbitrators' actions and are taking appropriate action. As a matter of policy, FINRA will not provide further information regarding its investigation or the final outcome of the investigation.

Mr. Mensack has also alleged that, during the arbitration, Morgan Stanley fabricated evidence and several witnesses committed perjury. We have forwarded Mr. Mensack's emails to FINRA, OFDMI-Central Review Group to consider if any FINRA rules or regulations were violated as he has alleged. You may be contacted regarding these allegations.

I understand Mr. Mensack's disappointment with the arbitrators' decision. However, FINRA has no authority to reverse the award. As you know, if Mr. Mensack wishes to challenge the award, he must do so in a court of competent jurisdiction pursuant to either state or federal law.

Very truly yours,



for Katherine M. Bayer
Regional Director

cc: FINRA, OFDMI-Central Review Group
Mark D. Mensack
Jeffrey I. Kohn, Esq.

Enclosure