

**Award**  
**FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Morgan Stanley Smith Barney, LLC (Claimant) vs. Mark D. Mensack (Respondent) vs. Morgan Stanley & Co., Inc., Peter Prunty, and Rich Maratea (Third-Party Respondents)

Case Number: 10-01687

Hearing Site: Philadelphia, Pennsylvania

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Nature of the Dispute:

Initial Claim: Member vs. Associated Person.

Third-Party Claim: Associated Person vs. Member and Associated Persons.

**REPRESENTATION OF PARTIES**

Claimant Morgan Stanley Smith Barney, LLC ("Claimant") and Third-Party Respondents Morgan Stanley & Co., Inc. ("Morgan Stanley"), Peter Prunty ("Prunty"), and Richard Maratea ("Maratea"), hereinafter collectively referred to as "Claimant and Third-Party Respondents": Jeffrey I. Kohn, Esq. and Jennifer M. Evans, Esq., O'Melveny & Meyers LLP, New York, NY.

Respondent Mark D. Mensack, hereinafter referred to as "Respondent": James Miller, Esq. and Nathan Zaperian, Esq., Shepherd Finkelman Miller & Shah, LLP, Media, PA.

**CASE INFORMATION**

Statement of Claim filed on or about: April 8, 2010.

Claimant and Third-Party Respondents' Answer to Respondent's Amended Counterclaim and Amended Third-Party Claim filed on or about: January 11, 2011.

Claimant signed the Submission Agreement: April 7, 2010.

Morgan Stanley signed the Submission Agreement: September 16, 2010.

Prunty signed the Submission Agreement: September 17, 2010.

Maratea signed the Submission Agreement: September 17, 2010.

Statement of Answer, Counterclaim, and Third-Party Claim filed by Respondent on or about: July 20, 2010.

Amended Statement of Answer, Counterclaim, and Third-Party Claim filed by Respondent on or about: December 20, 2010.

Respondent signed the Submission Agreement: July 16, 2010.

### **CASE SUMMARY**

Claimant asserted the following cause of action: breach of promissory note.

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

In his Counterclaim and Third-Party Claim, Respondent asserted the following causes of action: violation of New Jersey CEPA, tortious coercion to breach fiduciary duty, breach of contract and duty of good faith and fair dealing, and failure to supervise.

In his Amended Counterclaim and Third-Party Claim, Respondent asserted the following causes of action: violation of New Jersey CEPA, breach of contract and duty of good faith and fair dealing, failure to supervise, tortious interference with current and prospective business relations, and fraudulent inducement.

Unless specifically admitted in their Answer, Claimant and Third-Party Respondents denied the allegations made in the Amended Counterclaim and Third-Party Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$825,660.67, pre-award interest at the rate of 3.75%, or \$84.83 per day, from August 29, 2009 to the date of the award, post-award interest at the legal rate, fees and expenses, including all FINRA forum fees, reasonable attorneys' fees, as provided by the Note, and such other and further relief as the Panel deems appropriate.

Respondent requested dismissal of the Statement of Claim in its entirety, costs, and attorneys' fees.

In his Counterclaim and Third-Party Claim, Respondent requested compensatory damages in the amount of \$1,431,250.00 on his first, second and fourth causes of action, together with unspecified exemplary damages in such amount as will sufficiently discourage such conduct and deter Morgan Stanley and its employees from repeating such conduct in the future, compensatory damages in the amount of \$479,250.00 on his third cause of action, attorneys' fees, interest, costs, and such other and further relief as to the Panel seems just and proper.

In his Amended Counterclaim and Third-Party Claim, Respondent requested full compensatory and other damages in an amount to be proven at hearing, together with unspecified exemplary damages in such amount as will sufficiently discourage such conduct and deter Morgan Stanley and its employees from repeating such conduct in the future, interest, attorneys' fees, all in an amount in excess of \$5,000,000.00, injunctive relief, including mandatory injunctive relief requiring Respondents to cease and desist from their unlawful conduct, and such other and further relief as to the Panel seems just and proper.

Claimant and Third-Party Respondents requested dismissal of the Amended Counterclaim and Third-Party Claim in its entirety.

**OTHER ISSUES CONSIDERED AND DECIDED**

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

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. Respondent is liable for and shall pay to Claimant compensatory damages in the amount of \$745,816.67, plus interest in the amount of \$53,560.88, which represents interest at the rate of 3.75% for the period August 29, 2009 to July 29, 2011. Interest shall continue to accrue on the unpaid balance at the rate of 3.75% until the award is paid in full.
2. Respondent is liable for and shall pay to Claimant attorneys' fees in the amount of \$401,593.75 pursuant to the provisions of the Promissory Note.
3. Respondent is liable for and shall pay to Claimant \$1,250.00 to reimburse Claimant for the non-refundable portion of the filing fee previously paid to FINRA.
4. Respondent's Counterclaims and Third-Party claims are denied in their entirety.
5. Any and all relief not specifically addressed herein, including punitive damages, is denied.

**FEES**

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	= \$ 2,450.00
Counterclaim filing fee	= \$ 1,800.00

\* 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 parties, Morgan Stanley Smith Barney, LLC and Morgan Stanley & Co., Inc., are assessed the following:

Morgan Stanley Smith Barney, LLC

Member surcharge	= \$ 2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,000.00

Morgan Stanley & Co., Inc.

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,000.00

**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 Panel @ \$1,200.00 = \$ 1,200.00  
Pre-hearing conference: November 11, 2010 1 session

Eleven (11) Hearing sessions @ \$1,200.00 = \$13,200.00  
Hearing Dates: June 6, 2011 2 sessions  
June 7, 2011 2 sessions  
June 8, 2011 2 sessions  
June 9, 2011 1 session  
July 13, 2011 2 sessions  
July 14, 2011 2 sessions

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Total Hearing Session Fees = \$14,400.00

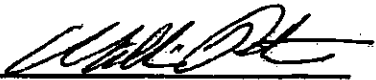
1. The Panel has assessed \$7,200.00 of the hearing session fees to Claimant.
2. The Panel has assessed \$7,200.00 of the hearing session fees to Respondent.

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

**ARBITRATION PANEL**

E. William Pastor	-	Public Arbitrator, Presiding Chairperson
David B. Harwi	-	Public Arbitrator
Michael J. Garry, CFP	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
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E. William Pastor  
Public Arbitrator, Presiding Chairperson

7/28/11  
Signature Date

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David B. Harwi  
Public Arbitrator

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Signature Date

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Michael J. Garry, CFP  
Non-Public Arbitrator

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Signature Date

July 29, 2011  
Date of Service (For FINRA Dispute Resolution use only)

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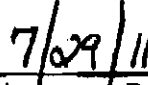
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Signature Date

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