

**Award  
FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimant  
Banco Nacional de Mexico S.A., Institucion de  
Banca Multiple, Fiduciary Division, as Trustee of  
the Trust Agreement Numbered 15437-5

Case Number: 12-01019

vs.

Respondent  
Morgan Stanley & Co., Inc.

Hearing Site: Miami, Florida

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Nature of the Dispute: Customer vs. Member

This case was decided by an all-public panel.

**REPRESENTATION OF PARTIES**

For Banco Nacional de Mexico S.A., Institucion de Banca Multiple, Fiduciary Division, as Trustee of the Trust Agreement Numbered 15437-5, hereinafter referred to as "Claimant": Jeffrey Erez, Esq., Jeffrey R. Sonn, Esq., Michael Rapaport, Esq. and Stefan Apotheker, Esq., Sonn & Erez, PLC, Miami, Florida.

For Morgan Stanley & Co., Inc., hereinafter referred to as "Respondent": Joseph C. Coates, Esq., Greenberg Traurig, West Palm Beach, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: March 16, 2012.  
Claimant signed the Submission Agreement: March 2, 2012.

Statement of Answer filed by Respondent on or about: June 12, 2012.  
Respondent signed the Submission Agreement: June 11, 2012.

Motion in Limine filed by Respondent on or about: July 14, 2014.  
Opposition to Motion in Limine filed by Claimant on or about: July 17, 2014.

**CASE SUMMARY**

Claimant asserted the following causes of action: 1) breach of fiduciary duty; 2) negligence; 3) negligent supervision; 4) conversion; 5) fraud; and 6) tortious interference with contract. The causes of action relate to whether Claimant agreed to pledge the assets of the Canasi Family Trust sub-accounts for any third party debtor, among other things.

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

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested compensatory damages in excess of \$1,000,000.00, punitive damages, interest, costs, attorneys' fees and such other and further relief as this Panel deemed just and proper.

At the close of the hearing, Claimant requested compensatory damages in the amount of \$5,228,314.62, interest, punitive damages and costs.

In its Statement of Answer, Respondent requested that the Statement of Claim be dismissed in its entirety, an assessment of all hearing session fees to Claimant and such other and further relief as this Panel deemed just and appropriate.

### **OTHER ISSUES CONSIDERED AND DECIDED**

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

On or about July 14, 2014, Respondent filed a Motion in Limine asserting, among other things, that it wanted to preclude Claimant from presenting evidence at the final hearing regarding the subject matter of certain emails Claimant has admitted it failed to preserve. On or about July 17, 2014, Claimant filed its Opposition to the Motion in Limine asserting, among other things, that Respondent's motion is untimely and Respondent has failed to state a legally valid basis for excluding critically important evidence. At the beginning of the final hearing, the Panel deferred ruling on the motion until the relevant witness testified. Prior to the witnesses' testimony, the Panel heard oral argument from the parties on the motion and denied Respondent's Motion in Limine.

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 found liable for negligence and negligent supervision and shall pay to Claimant compensatory damages in the amount of \$4,500,000.00.
2. Any and all claims for relief not specifically addressed herein, including Claimant's requests for attorneys' fees and punitive damages, are denied.

### FEES

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

#### Filing Fees

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

Initial Claim 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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party and a member firm, Respondent is assessed the following:

Member Surcharge = \$ 2,800.00  
Pre-Hearing Processing Fee = \$ 750.00  
Hearing Processing Fee = \$ 5,000.00

#### Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

October 7 – 16, 2013, adjournment by parties = \$ 1,200.00

The Panel has assessed \$600.00 of the adjournment fee to Claimant.

The Panel has assessed \$600.00 of the adjournment fee 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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with the Panel @ \$1,200.00/session = \$ 2,400.00

Pre-hearing conferences: August 14, 2012 1 session  
December 12, 2013 1 session

Eighteen (18) Hearing sessions @ \$1,200.00/session = \$21,600.00

Hearing Dates: July 21, 2014 3 sessions  
July 22, 2014 2 sessions  
July 23, 2014 2 sessions  
July 24, 2014 2 sessions  
July 25, 2014 2 sessions  
July 28, 2014 2 sessions  
July 29, 2014 2 sessions  
July 30, 2014 3 sessions

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Total Hearing Session Fees = \$24,000.00

The Panel has assessed \$12,000.00 of the hearing session fees to Claimant.

The Panel has assessed \$12,000.00 of the hearing session fees to Respondent.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, hotel expenses.

Agreement of parties to pay additional expenses incurred by Panel in order to hold the final hearings in Miami, Florida: = \$6,080.00

Claimant has agreed to pay \$3,040.00.

Respondent has agreed to pay \$3,040.00.

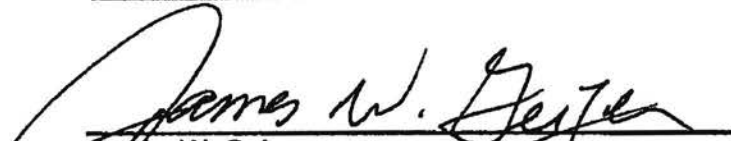
All balances are payable to FINRA Dispute Resolution and are due upon receipt.

**ARBITRATION PANEL**

|                  |   |  |
|------------------|---|--|
| James W. Geiger  | - | Public Arbitrator, Presiding Chairperson |
| Paul J. Burkhart | - | Public Arbitrator                        |
| Harris Gally     | - | 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**

  
\_\_\_\_\_  
James W. Geiger  
Public Arbitrator, Presiding Chairperson

  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Paul J. Burkhart  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Harris Gally  
Public Arbitrator

\_\_\_\_\_  
Signature Date

8/15/14  
\_\_\_\_\_  
Date of Service (For FINRA Dispute Resolution office use only)

**ARBITRATION PANEL**

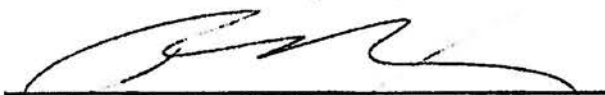
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Paul J. Burkhart  
Public Arbitrator

8-13-14  
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Signature Date

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Harris Gally  
Public Arbitrator

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Paul J. Burkhart - Public Arbitrator  
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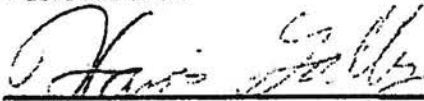
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