

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Karen Busch

Case Number: 21-00203

vs.

Respondent
Morgan Stanley Smith Barney, LLC

Hearing Site: New York, New York

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.

The evidentiary hearing was conducted partially by videoconference.

REPRESENTATION OF PARTIES

For Claimant Karen Busch (“Claimant”): Barry R. Lax, Esq., Brian J. Neville, Esq., and Matthew C. Plant, Esq., Lax & Neville, LLP, New York, New York.

For Respondent Morgan Stanley Smith Barney, LLC (“Respondent”) Jeremy S. Winer, Esq., Morgan Stanley Smith Barney, LLC, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: January 26, 2021.
Claimant signed the Submission Agreement: January 13, 2021.

Statement of Answer filed by Respondent on or about: April 7, 2021.
Respondent signed the Submission Agreement: April 7, 2021.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: breach of fiduciary duties; fraud; negligence and/or gross negligence; breach of contract and breach of the implied covenant of good faith and fair dealing; unjust enrichment; violation of industry rules; violation of the Securities Exchange Act of 1934 and Rule 10B-5; suitability; and failure to supervise. The causes of action relate to WisdomTree Investments, Inc. stock.

Unless specifically admitted in the Statement of 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 an amount in excess of \$1,600,000.00 plus interest until the date the award is fully paid; fees, commissions, and compensation earned from Claimant's investments; punitive damages; attorneys' fees, expenses, and costs, including experts' fees; rescission or a recessionary measure of damages; and for such additional equitable/injunctive or other relief as deemed appropriate.

In the Statement of Answer, Respondent requested: that the claims against it be denied in their entirety; that Claimant be denied the relief sought in the Statement of Claim; and expungement on behalf of Unnamed Parties David Wachsman and Todd Wachsman, of all references to this matter from their Central Registration Depository ("CRD") registration records.

OTHER ISSUES CONSIDERED AND DECIDED

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

The evidentiary hearings were held partially in-person and partially by videoconference on all hearing dates.

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. Respondent is liable for and shall pay to Claimant the sum of \$ 1,800,000.00 in compensatory damages.
2. David Wachsman's request for expungement of the above-captioned arbitration (Occurrence Number 2112215) from registration records maintained by the CRD is denied.
3. Todd Wachsman's request for expungement of the above-captioned arbitration (Occurrence Number 2112213) from registration records maintained by the CRD is denied.
4. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, and attorneys' fees, are denied.

FEES

Pursuant to the Code of Arbitration Procedure ("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
Expungement Filing Fee	= \$	1,575.00
Expungement 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 is assessed the following:

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

Postponement Fees

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

March 28-31 and April 1, 4-5, 2022, postponement requested by Claimant	= \$	1,400.00
November 1-4 and 7-11, 2022, postponement		Waived
June 23, 2023, postponement requested by the parties	= \$	1,400.00
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Total Postponement Fees	= \$	2,800.00

The Panel has assessed \$1,400.00 of the postponement fees to Claimant.

The Panel has assessed \$1,400.00 of the postponement fees to Respondent.

Last-Minute Cancellation Fees

Fees apply when a hearing on the merits is cancelled within ten calendar days before the start of a scheduled hearing session:

March 28- 31 and April 1, 4-5, 2022, cancellation requested by Claimant	= \$	1,800.00
June 23, 2023, cancellation requested by the parties	= \$	1,800.00
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Total Last-Minute Cancellation Fees	= \$	3,600.00

The Panel has assessed \$1,800.00 of the last-minute cancellation fees to Claimant.

The Panel has assessed \$1,800.00 of the last-minute cancellation fees 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 Arbitrators, including a pre-hearing conference with the Arbitrators, which lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session with a single Arbitrator @ \$450.00/session	= \$	450.00
Pre-Hearing Conference: December 22, 2021	1 session	
Four (4) pre-hearing sessions with the Panel @ \$1,400.00/session	= \$	5,600.00
Pre-Hearing Conferences: June 3, 2021	1 session	
March 31, 2022	1 session	
October 18, 2022	1 session	
November 1, 2022	1 session	
Twenty-six (26) hearing sessions @ \$1,400.00/session	= \$	36,400.00
Hearings: May 15, 2023	2 sessions	
May 17, 2023	2 sessions	
May 18, 2023	2 sessions	
May 22, 2023	2 sessions	
May 23, 2023	2 sessions	
May 24, 2023	2 sessions	
May 25, 2023	2 sessions	
May 26, 2023	2 sessions	
June 1, 2023	2 sessions	
June 2, 2023	2 sessions	
June 16, 2023	2 sessions	
August 7, 2023	2 sessions	
August 8, 2023	2 sessions	

Total Hearing Session Fees = \$ 42,450.00

The Panel has assessed \$21,225.00 of the hearing session fees to Claimant.

The Panel has assessed \$21,225.00 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Howard Alan Grinsberg	-	Public Arbitrator, Presiding Chairperson
Benjamin L. Anderson	-	Public Arbitrator
Qiana Martin	-	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

Howard Alan Grinsberg

Howard Alan Grinsberg
Public Arbitrator, Presiding Chairperson

08/18/2023

Signature Date

Benjamin L. Anderson

Benjamin L. Anderson
Public Arbitrator

08/18/2023

Signature Date

Qiana Martin

Qiana Martin
Public Arbitrator

08/18/2023

Signature Date

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August 21, 2023

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