

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Nicolas Pablo Lumermann

Case Number: 19-01585

vs.

Respondents

Morgan Stanley
Victor Tsutsumi

Hearing Site: New York, New York

Consolidated with

Claimant

Morgan Stanley
Morgan Stanley FA Notes Holdings
Morgan Stanley Smith Barney Financing

Case Number: 19-01586

vs.

Respondent

Nicolas Pablo Lumermann

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 Disputes:

19-01585: Associated Person vs. Member, and Associated Person

19-01586: Member, and Non-Members vs. Associated Person

REPRESENTATION OF PARTIES

19-01585

For Nicolas Pablo Lumermann (“Lumermann”): Lance J. Gotko, Esq., and Geoffrey Cajigas, Esq., Friedman Kaplan Seiler & Adelman LLP, New York, New York.

For Morgan Stanley, Morgan Stanley FA Notes Holdings (“FA Notes Holdings”), Morgan Stanley Smith Barney Financing (“MSSB Financing”), and Victor Tsutsumi (“Tsutsumi”): Tracy L. Gerber, Esq., and Elizabeth E. Moum, Esq., Greenberg Traurig PA, West Palm Beach, Florida.

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For Morgan Stanley, and Morgan Stanley FA Notes Holdings (“FA Notes Holdings”): Tracy L. Gerber, Esq., Greenberg Traurig PA, West Palm Beach, Florida.

For Nicolas Pablo Lumermann: Lance J. Gotko, Esq., Friedman Kaplan Seiler & Adelman LLP, New York, New York.

CASE INFORMATION

19-01585

Statement of Claim filed on or about: June 5, 2019.

Amended Statement of Claim filed on or about: August 5, 2019.

Statement of Answer and Counterclaim filed by Lumermann on or about: August 5, 2019.

Lumermann signed the Submission Agreement: June 2, 2019.

Statement of Answer filed by Morgan Stanley and Tsutsumi on or about: September 19, 2019.

Amended Statement of Claim filed by Morgan Stanley on or about: April 20, 2020.

Second Amended Statement of Claim filed by Morgan Stanley and MSSB Financing on or about: August 23, 2021.

Morgan Stanley signed the Submission Agreement: September 19, 2019.

Tsutsumi signed the Submission Agreement: September 19, 2019

MSSB Financing did not file a Statement of Answer.

MSSB Financing signed the Submission Agreement: September 28, 2021.

FA Notes Holdings did not file a Statement of Answer or sign the Submission Agreement.

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Statement of Claim filed by Morgan Stanley and FA Notes Holdings on or about: June 5, 2019.

Morgan Stanley signed the Submission Agreement: June 5, 2019.

FA Notes Holdings signed the Submission Agreement June 5, 2019.

CASE SUMMARY

19-01585

In the Statement of Claim as amended, Lumermann asserted the following causes of action: breach of fiduciary duty; fraud; misrepresentation; aiding and abetting breach of contract; breach of contract; violation of the FMLA; and declaration of legal rights. Several causes of action were dropped by stipulation of counsel for Lumermann during the course of the proceeding.

Unless specifically admitted in the Statement of Answer, Morgan Stanley and Tsutsumi denied the allegations made in the Statement of Claim as amended and asserted various affirmative defenses.

19-01586

In the Statement of Claim as amended, Morgan Stanley and FA Notes Holdings asserted the following causes of action: breach of promissory notes; breach of contract ; unjust enrichment; and quantum meruit.

Unless specifically admitted in the Statement of Answer and Counterclaim, Lumermann denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In the Counterclaim, Lumermann asserted the following cause of action: breach of contract.

Unless specifically admitted in the Answer to the Counterclaim, Morgan Stanley and FA Notes Holdings denied the allegations made in the Counterclaim and asserted various affirmative defenses.

RELIEF REQUESTED

19-01585

In the Statement of Claim, Lumermann requested unspecified compensatory damages; punitive damages, pre- and post-judgment interest; legal and other expenses including attorneys' fees; declaration that Morgan Stanley constructively terminated Claimant without cause, and as a result, Claimant does not owe Morgan Stanley any amount under the forgivable loans that were outstanding at the time of termination; and such other and further relief as the Panel may deem just and proper.

In the Amended Statement of Claim, Lumermann requested compensatory damages in an amount no less than \$2,678,626.45 together with pre- and post-judgment interest; punitive damages, legal and other expenses including attorneys' fees; declaration that Morgan Stanley constructively terminated Claimant without cause, and as a result, Claimant does not owe Morgan Stanley any amount under the forgivable loans that were outstanding at the time of termination; and such other and further relief as the Panel may deem just and proper.

In the Answer to the Amended Statement of Claim, Morgan Stanley and Tsutsumi requested that the Panel deny Claimant's claim in its entirety.

In the Answer and Counterclaim to Morgan Stanley and FA Notes Holdings Statement of Claim, Lumermann requested damages of at least \$2,678,626.45, together with pre- and post-judgment interest; legal and other expenses including attorneys' fees; and such other and further relief as the Panel may deem just and proper.

In the Answer to the Counterclaim, Morgan Stanley and FA Notes Holdings requested that the Panel deny Lumermann's Counterclaim in its entirety.

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In the Statement of Claim, Morgan Stanley and FA Notes Holdings requested compensatory damages in the amount of \$2,678,626.45, plus interest, costs, and attorneys' fees in connection with pursuing collection under the notes.

OTHER ISSUES CONSIDERED AND DECIDED

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

On July 29, 2019, the parties agreed to consolidate FINRA arbitration case numbers 19-01585 and 19-01586.

On April 20, 2020, Morgan Stanley filed an Agreed Motion to Amend the original Statement of Claim to remove FA Notes Holdings as a party to this proceeding. By Order dated May 1, 2020, the Panel entered an order granting the Motion to Amend.

On August 23, 2021, Morgan Stanley filed a Notice of Note Assignment and Unopposed Motion to Add MSSB Financing as a Claimant. By Order dated September 16, 2021, the Panel granted the motion.

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. Lumermann's claims and Counterclaims asserted in 19-01585 and 19-01586 are denied in their entirety.
2. Lumermann is liable for and shall pay to Morgan Stanley and MSSB Financing the sum of \$3,108,555.44 in compensatory damages.
3. Lumermann is liable for and shall pay to Morgan Stanley and MSSB Financing interest in the amount of \$411.47 per day from February 15, 2022, until the amount of \$3,108,554.44 referred to in paragraph two is paid in full. In the event of partial payment of such amount of \$3,108,555.44, the daily amount of interest shall be reduced accordingly with reference to the dates and amounts of partial payments and the applicable stated interest rates.
4. Any and all claims for relief not specifically addressed herein, including any requests for declaration, 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
Counterclaim Filing Fee	= \$	2,000.00

**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, Morgan Stanley is assessed the following:

Member Surcharge	= \$	3,025.00
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Member Process Fee = \$ 6,800.00

Late Pre-Hearing Cancellation Fees

Fees apply when a pre-hearing conference is cancelled within three business days of the scheduled conference:

November 8, 2019, cancellation requested by the parties. = \$ 300.00

Total Late Pre-Hearing Cancellation Fees = \$ 300.00

The Panel has assessed \$150.00 of the late pre-hearing cancellation fees to Lumermann.

The Panel has assessed \$150.00 of the late pre-hearing cancellation fees jointly and severally to Morgan Stanley and FA Notes Holdings.

Postponement Fees

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

February 7 and 8, 2022, postponement requested by the parties WAIVED

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: January 4, 2021, 1 session

Three (3) pre-hearing sessions with the Panel @ \$1,500.00/session = \$ 4,500.00
Pre-Hearing Conferences: January 24, 2020 1 session
January 28, 2020 1 session
March 22, 2021 1 session

Sixteen (16) hearing sessions @ \$1,500.00/session = \$ 24,000.00
Hearings: February 14, 2022 2 sessions
February 15, 2022 2 sessions
February 16, 2022 2 sessions
February 17, 2022 2 sessions
February 18, 2022 2 sessions
February 22, 2022 2 sessions
February 23, 2022 2 sessions
February 24, 2022 2 sessions

Total Hearing Session Fees = \$ 28,950.00

The Panel has assessed \$13,725.00 of the hearing session fees to Lumermann.

The Panel has assessed \$13,725.00 of the hearing session fees to Morgan Stanley.

The Panel waived the \$1,500.00 hearing session fees for the January 24, 2020 pre-hearing conference.

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

ARBITRATION PANEL

Harvey E. Benjamin	-	Public Arbitrator, Presiding Chairperson
John Warner Lowe, Jr.	-	Public Arbitrator
Alan Wills Borst, Jr.	-	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

Harvey E. Benjamin

Harvey E. Benjamin
Public Arbitrator, Presiding Chairperson

04/07/2022

Signature Date

John Warner Lowe, Jr.

John Warner Lowe, Jr.
Public Arbitrator

04/08/2022

Signature Date

Alan Wills Borst, Jr.

Alan Wills Borst, Jr.
Non-Public Arbitrator

04/07/2022

Signature Date

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April 08, 2022

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