

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

---

In the Matter of the Arbitration Between:

Claimant  
Todd Clark Kalish

Case Number: 18-03388

vs.

Respondent  
Morgan Stanley

Hearing Site: Cleveland, Ohio

---

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: Associated Person vs. Member

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimant Todd Clark Kalish (“Claimant”): Jason A. Archinaco, Esq. and Michael A. O’Leary, Esq., The Archinaco Firm, LLC, Pittsburgh, Pennsylvania.

For Respondent Morgan Stanley (“Respondent”): H. Nicholas Berberian, Esq. and Tina L. Winer, Esq., Neal, Gerber & Eisenberg LLP, Chicago, Illinois.

**CASE INFORMATION**

Statement of Claim filed on or about: September 27, 2018.

Statement of Answer to Counterclaim filed on or about: February 1, 2019.

Statement of Answer to Amended Counterclaim filed on or about: March 19, 2021.

Claimant signed the Submission Agreement: September 12, 2018.

Statement of Answer and Counterclaim filed on or about: January 16, 2019.

Amended Counterclaim filed on or about: January 25, 2021.

Respondent signed the Submission Agreement: January 15, 2019.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action: defamation, tortious interference with contract, intentional interference with prospective contractual relations, breach of contract/conversion, violation of ORC 1335.11 (commission on sales) and a claim alleging that the Form U5 filed by Respondent, as part of registration records maintained by the Central Registration Depository, is defamatory in nature. The causes of action related to allegations that

Respondent terminated Claimant despite knowing that accusations made against Claimant were not credible.

Unless specifically admitted in the Statement of Answer and Counterclaim, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In the Counterclaim, as amended, Respondent asserted the following cause of action: unjust enrichment. The cause of action related to allegations that Claimant received overpayments from Respondent based on administrative errors.

Unless specifically admitted in the Statement of Answer to the Counterclaim, as amended, Claimant denied the allegations made in the Statement of Answer and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested damages in excess of \$1,000,000.00, including punitive damages; expungement of the Form U5 filed by Respondent; and that all forum costs be assessed against Respondent.

In the Statement of Answer and Counterclaim, as amended, Respondent requested that the Statement of Claim be dismissed in their entirety and that Claimant be ordered to pay Respondent \$28,397.47 plus interest, attorneys' fees and costs, and such other and further relief as the Panel deems just and proper.

In the Statement of Answer to Counterclaim, as amended, Claimant requested that the Counterclaim, as amended, be denied in its entirety.

At the hearing, Claimant requested compensatory damages in a range between \$10,839,061.49 and \$21,986,015.49 consisting of the following components: lost commissions: \$100,000.00, lost bonus/retirement: \$430,737.49, lost future income in a range between \$9,958,324.00 and \$21,105,278.00, and damages for emotional distress, loss of reputation, and embarrassment: \$350,000.00. Claimant requested punitive damages in a range between \$20,978,122.98 and \$43,272,030.98. Claimant requested total damages (compensatory and punitive) in a range between \$31,817,184.47 and \$65,258,046.47.

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

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

On February 1, 2019, Claimant filed a Motion to Strike Respondent's Answer to Statement of Claim and Counterclaim ("Motion to Strike"). On February 8, 2019, Respondent filed a Response to the Motion to Strike. In an Order dated March 20, 2019, the Panel denied the Motion to Strike.

On February 25, 2019, the parties filed a Stipulation to Dismiss Count V of the Statement of Claim.

On January 25, 2021, Respondent filed a Motion for Leave to File Amended Counterclaim (“Motion to Amend”). On February 4, 2021, Claimant filed a Response in Opposition to the Motion to Amend. On February 9, 2021, Respondent filed a Reply Brief in Support of the Motion to Amend. In an Order dated March 8, 2021, the Panel granted the Motion to Amend.

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. Claimant’s claims are denied in their entirety.
2. Claimant’s request for expungement is denied.
3. Claimant is liable for and shall pay to Respondent the sum of \$28,397.47 in damages.
4. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, treble damages, and attorneys’ fees, are denied.

**FEES**

Pursuant to the Code of Arbitration Procedure, 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	=\$ 1,450.00

*\*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, 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:

December 9-13, 2019, postponement requested by the parties	=\$ 1,400.00
<hr/>	
Total Postponement Fees	=\$ 1,400.00

The Panel has assessed \$700.00 of the postponement fees to Claimant.

The Panel has assessed \$700.00 of the postponement fees to Respondent.

**Discovery-Related Motion Fees**

Fees apply for each decision rendered on a discovery-related motion.

One (1) decision on a discovery-related motion on the papers with one (1) Arbitrator @ \$200.00/decision = \$ 200.00

Respondent submitted one (1) discovery-related motion

---

Total Discovery-Related Motion Fees = \$ 200.00

The Panel has assessed \$100.00 of the discovery-related motion fees to Claimant.

The Panel has assessed \$100.00 of the discovery-related motion 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 Arbitrator(s), including a pre-hearing conference with the Arbitrator(s), which lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) pre-hearing sessions with a single Arbitrator @ \$450.00/session = \$ 1,350.00  
Pre-Hearing Conferences: August 13, 2019 1 session  
December 19, 2019 1 session  
April 30, 2020 1 session

Seven (7) pre-hearing sessions with the Panel @ \$1,400.00/session = \$ 9,800.00  
Pre-Hearing Conferences: March 5, 2019 1 session  
March 18, 2019 1 session  
November 26, 2019 1 session  
June 1, 2020 1 session  
March 8, 2021 1 session  
December 23, 2021 1 session  
January 14, 2022 1 session

Twenty-six (26) hearing sessions @ \$1,400.00/session = \$ 36,400.00  
Hearings: January 17, 2022 2 sessions  
January 18, 2022 2 sessions  
January 19, 2022 2 sessions  
January 20, 2022 2 sessions  
January 21, 2022 2 sessions  
February 3, 2022 2 sessions  
February 4, 2022 2 sessions  
March 1, 2022 2 sessions  
March 2, 2022 2 sessions  
March 3, 2022 2 sessions  
March 8, 2022 2 sessions

March 9, 2022	2 sessions
March 10, 2022	2 sessions

---

Total Hearing Session Fees	= \$ 47,550.00
----------------------------	----------------

The Panel has assessed \$23,775.00 of the hearing session fees to Claimant.

The Panel has assessed \$23,775.00 of the hearing session fees to Respondent.

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

**ARBITRATION PANEL**

Jeffrey M. Bain	-	Public Arbitrator, Presiding Chairperson
Karl Strohbehn	-	Public Arbitrator
Marshall Alton Bennett, Jr.	-	Non-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**

***Jeffrey M. Bain***

\_\_\_\_\_  
Jeffrey M. Bain  
Public Arbitrator, Presiding Chairperson

**05/12/2022**

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

***Karl Strohbehn***

\_\_\_\_\_  
Karl Strohbehn  
Public Arbitrator

**05/11/2022**

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

***Marshall Alton Bennett, Jr.***

\_\_\_\_\_  
Marshall Alton Bennett, Jr.  
Non-Public Arbitrator

**05/11/2022**

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

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.

May 12, 2022

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