NEWS REGULATION AND LEGISLATION

Finra arbitrators order Morgan Stanley to pay $3.3 million for concealing evidence

Brokerage calls decision 'unwarra

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By Mark Schoeff Jr.

Finra arbitrators ordered *Morgan Stanley* to pay $3.3 million to investors in a Puerto Rico bond case, most of it because the firm allegedly concealed evidence in a hearing. The three-person all-public *Financial Industry Regulatory Authority Inc.* panel seemed to get fed up with Morgan Stanley's foot-dragging in complying with a discovery request "related to the termination of a key employee" of the brokerage involved in the case, *according to the July 16 award*. At an evidentiary hearing, the arbitration panel learned Morgan Stanley failed to turn over the requested documents. The arbitration chairperson approved the discovery request prior to the hearing. Then the situation got tense. The full panel again ordered Morgan Stanley to produce the documents, and the brokerage did not send them to the claimants' lawyers "by midnight" nor did it explain why the documents weren't delivered, the award said. (**More:** *Finra rogue broker rule would affect 61 firms*) Morgan Stanley's attorneys then proposed to have the arbitrators review the documents without the claimants' attorneys present. The arbitration panel rejected that request and again ordered Morgan Stanley to give the documents to the opposing attorneys. "The panel took note of the extreme prejudice [Morgan Stanley's] failure of compliance caused claimants' counsel in preparing their case and asserting their claims without the withheld documents, which the panel deemed were highly relevant to the dispute in question, the central figure of which was the terminated employee whose related documents were being withheld," the award states. The arbitrators ruled Morgan Stanley violated Finra rules related to acting in good faith to produce discovery documents. In addition, the panel awarded the claimants, Isabel Litovich-Quintana and Jose A. Torres, $261,420 in compensatory damages. "The panel was extremely offended by Morgan Stanley's conduct, and I think it sends a strong message to brokerage firms that discovery abuse will not be tolerated," said Jeffrey Erez, who represented the claimants through Sonn & Erez and who now owns *Erez Law*. "The integrity of the system is challenged if parties don't play by the rules." (**More:** *Bills would end mandatory arbitration in adviser, broker contracts*) Morgan Stanley criticized the severity of the award. "We strongly disagree with the panel's award of monetary sanctions in this case, which we believe are unwarranted and excessive," Morgan Stanley spokeswoman Christine Jockle said in a statement. The arbitration involved 19 days of hearings, an unusually long process that resulted in a hefty penalty. "I have never seen such a large discovery sanction in a Finra arbitration," said Brandon Reif, managing partner at *Reif Law Group*. The decision could continue to haunt the brokerage because claimants in future Puerto Rico bond actions could refer to it. "This is going to poison every [Puerto Rico] case going forward for Morgan Stanley," Mr. Reif said. "The lesson here is parties in arbitration, especially the industry, have to listen up and take the discovery duties very seriously."

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