

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

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In the Matter of the Arbitration Between:

Claimant

Mikedmat Dena Inc.

Case Number: 20-02079

vs.

Respondents

Morgan Stanley Smith Barney LLC  
Jacob Gershon “Cobby” Shapira

Hearing Site: New York, New York

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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 and Associated Person.

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimant Mikedmat Dena Inc.: John Dellaportas, Esq., Emmet, Marvin & Martin, LLP, New York, New York.

For Respondents Morgan Stanley Smith Barney LLC (“Morgan Stanley”), and Jacob Gershon “Cobby” Shapira (“Jacob Shapira”): Jeremy S. Winer, Esq., Morgan Stanley Smith Barney LLC, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: July 1, 2020.

Amended Statement of Claim filed on or about February 5, 2021.

Mikedmat Dena Inc. signed the Submission Agreement: July 1, 2020.

Joint Statement of Answer filed by Respondents on or about: August 26, 2020.

Joint Statement of Answer to the Amended Statement of Claim filed by Respondents on or about March 9, 2021.

Morgan Stanley signed the Submission Agreement: August 25, 2020.

Jacob Shapira signed the Submission Agreement: August 28, 2020.

### **CASE SUMMARY**

In the Amended Statement of Claim, Claimant asserted the following causes of action: unsuitability, over-concentration/failure to diversify, breach of fiduciary duty, breach of contract, material misrepresentation, negligence, churning, and unauthorized transactions. The causes of action relate to shorted Amazon stock and other securities.

Unless specifically admitted in the Joint Statement of Answer and Joint Answer to the Amended Statement Claim, Respondents denied the allegations made in the Statement of Claim and Amended Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Amended Statement of Claim, Claimant requested: compensatory damages of no less than \$3 million, which represents the minimum income that would have been generated on Claimant's principal if the money had been properly invested; rescission of all unsuitable, unauthorized, and other improper transactions; pre-judgment and post-judgment interest at the legal rate; reasonable attorney's fees, FINRA fees and expert witness fees; punitive damages in an amount to be determined at the hearing; and such other relief as the Panel deems appropriate.

In the Joint Answer to the Amended Statement of Claim, Respondents requested: that the claims against them be denied in their entirety; that Claimant be denied the relief sought in the Statement of Claim and Amended Statement of Claim; and expungement of all references to the above-captioned arbitration from the registration records of Jacob Shapira maintained by the Central Registration Depository ("CRD").

At the conclusion of the hearing, Claimant requested: compensatory damages in the amount of \$3,116,803.00 and punitive damages of \$12,467,212.00.

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

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

In Respondents' Joint Statement of Answer and Joint Answer to the Amended Statement Claim, Respondents requested expungement of all references to the above-captioned arbitration from the registration records of Jacob Shapira maintained by the CRD. The Panel noted that Respondents did not specifically address the request for expungement in either the documents submitted, or the testimony provided. As such, the Panel declined to rule on Respondents' request for expungement of the registration records of Jacob Shapira.

### **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. Respondents are jointly and severally liable for and shall pay to Claimant the sum of \$782,278.90 in compensatory damages.
2. Any and all claims for relief not specifically addressed herein, including any requests for rescission, 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

*\*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 person at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent Morgan Stanley 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:

February 23-25, 2021, postponement requested by the parties = \$ 1,400.00

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Total Postponement Fees = \$ 1,400.00

The Panel has assessed the total postponement fees jointly and severally to Respondents.

#### **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 25, 2021 1 session

One (1) pre-hearing session with the Panel @ \$1,400.00/session = \$ 1,400.00  
Pre-Hearing Conference: October 13, 2020 1 session

Eight (8) hearing sessions @ \$1,400.00/session = \$ 11,200.00  
Hearings: March 16, 2021 2 sessions  
March 17, 2021 2 sessions  
March 18, 2021 2 sessions

March 26, 2021

2 sessions

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Total Hearing Session Fees	= \$ 13,050.00
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The Panel has assessed the total hearing session fees jointly and severally to Respondents.

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

**ARBITRATION PANEL**

Howard L. Sobel	-	Public Arbitrator, Presiding Chairperson
Lori H. Carena	-	Public Arbitrator
Alan Robert Sacks	-	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 L. Sobel***

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Howard L. Sobel  
Public Arbitrator, Presiding Chairperson

**04/27/2021**

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Signature Date

***Lori H. Carena***

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Lori H. Carena  
Public Arbitrator

**04/27/2021**

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

***Alan Robert Sacks***

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Alan Robert Sacks  
Public Arbitrator

**04/27/2021**

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

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April 27, 2021

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