

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant
[REDACTED]

Case Number: [REDACTED]

vs.

Respondent
Morgan Stanley Smith Barney LLC

Hearing Site: New York, New York

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant [REDACTED]: Dochter D. Kennedy, MBA, J.D., Advisor Law, LLC, Broomfield, Colorado.

For Respondent Morgan Stanley Smith Barney LLC: Jeremy S. Winer, VP, Esq., Morgan Stanley, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: August 17, 2016.

[REDACTED] signed the Submission Agreement: August 17, 2016.

Statement of Answer filed by Respondent on or about: September 30, 2016.

Morgan Stanley signed the Submission Agreement: September 30, 2016.

CASE SUMMARY

Claimant asserted the following cause of action: expungement of his CRD records.

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 the amount of \$1.00, expungement of his CRD records and any and all other relief as the Arbitrator deems just and equitable.

At the close of the hearing, Claimant withdrew his request for compensatory damages in the amount of \$1.00.

In the Statement of Answer, Respondent opposed Claimant's request for compensatory damages. Respondent supported Claimant's request for expungement.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator acknowledges that he has read the pleadings and other materials filed by the parties.

On or about December 8, 2016, Claimant provided the Office of Dispute Resolution with proof that he served the customer in the underlying complaint, with notice of his expungement request and notice of the customer's right to participate and testify at the expungement hearing.

By email dated January 4, 2017, the customer in the underlying complaint, contested Claimant's request for expungement.

The Arbitrator commenced a recorded telephonic expungement hearing on January 5, 2017 so the parties could present oral argument and evidence on Claimant's request for expungement of his CRD records. At the hearing, Claimant requested that the Arbitrator postpone the expungement hearing. The Arbitrator granted Claimant's request.

The Arbitrator reconvened the recorded telephonic expungement hearing on January 19, 2017 so the parties could present oral argument and evidence on Claimant's request for expungement of his CRD records. The customer did not participate in the expungement hearing held on January 19, 2017.

On February 9, 2017, the Arbitrator conducted a recorded telephonic expungement hearing so the customer could testify in connection with Claimant's request for expungement of his CRD records. The customer did participate and testify at the expungement hearing held on February 9, 2017.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's Statement of Claim, Respondent's Statement of Answer, Claimant's BrokerCheck Report, and the evidence and testimony presented at the hearing. The Arbitrator also relied on the following facts: (1) the customer received a copy of a report dated before the date of the reallocation wherein the proposed reallocation of the portfolio was outlined; (2) the customer neither filed a claim nor received a settlement; and (3) the customer wanted Claimant to continue as his advisor after the reallocation.

The Arbitrator confirmed that the Claimant has not previously requested expungement of the same disclosure from the CRD.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, the testimony and evidence presented at the expungement hearings, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's request for expungement of his CRD records is granted.

The Arbitrator recommends the expungement of all references to occurrence # [REDACTED] from registration records maintained by the Central Registration Depository ("CRD"), for Claimant [REDACTED] (CRD # [REDACTED]), with the understanding that, pursuant to Notice to Members 04-16, Claimant [REDACTED] must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 13805 of the Code, the Arbitrator has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is false.

The Arbitrator has made the above Rule 2080 finding based on the following reasons:

The allegation made on Claimant's BrokerCheck Report is false in light of the testimony of both the Claimant and the customer that they discussed and agreed on a reallocation of the customer's portfolio from equities to bonds well before, and at the time, the reallocation took place.

2. Any and all claims for relief not specifically addressed herein, including punitive damages/treble damages, and attorneys' fees, are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

FINRA Office of Dispute Resolution assessed a filing fee* for each claim:

Initial Claim Filing Fee	=\$ 50.00
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**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, Morgan Stanley Smith Barney, is assessed the following:

Member Surcharge = \$ 150.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

January 5, 2017, adjournment by Claimant = \$ 50.00

Total Adjournment Fees = \$ 50.00

The Arbitrator has assessed the \$50.00 adjournment fees to Claimant.

Last Minute Cancellation Fees

January 5, 2017, adjournment by Claimant = \$ 600.00

Total Last Minute Cancellation Fee = \$ 600.00

The Arbitrator has assessed the \$600.00 last minute cancellation fees to Claimant.

Hearing Session Fees and Assessments

The Arbitrator has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) hearing sessions on expungement with parties @ \$50.00 = \$ 100.00

Hearing Dates: January 19, 2017 1 session
February 9, 2017 1 session

Total Hearing Session Fees = \$ 100.00

The Arbitrator has assessed the \$100.00 hearing session fees to Claimant.

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

ARBITRATOR

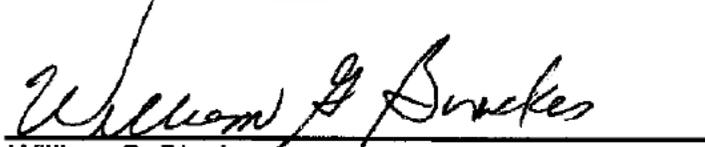
William G. Binckes

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Sole 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.

Arbitrator's Signature



William G. Binckes
Sole Public Arbitrator

2/24/17
Signature Date

February 24, 2017

Date of Service (For FINRA Office of Dispute Resolution office use only)