

**Award**  
**FINRA Office of Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimant

Case Number: [REDACTED]

vs.

Respondent

Morgan Stanley & Co., LLC

Hearing Site: Boca Raton, Florida

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant [REDACTED] III: Michael O'Gara, Esq., AdvisorLaw LLC,  
Broomfield, Colorado.

For Respondent Morgan Stanley & Co., LLC: Kimberly Gustafson, Esq., Vice President,  
Morgan Stanley, St. Petersburg, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: December 7, 2016.

[REDACTED] signed the Submission Agreement: December 7, 2016.

Statement of Answer filed by Respondent on or about: January 30, 2017.

Morgan Stanley & Co., LLC signed the Submission Agreement: January 30, 2017.

**CASE SUMMARY**

Claimant asserted the cause of action of inaccurate reporting on his Central Registration Depository ("CRD") records. The cause of action relates to a previously filed arbitration, FINRA Case No. [REDACTED] Customer vs. Morgan Stanley & Co. Incorporated, et al. (Occurrence No. [REDACTED]), wherein Claimant was the subject of the allegations in the Statement of Claim, as well as a complaint filed by a different customer (Occurrence No. [REDACTED]), both of which were recorded by Respondent on Claimant's 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: expungement of all references to Occurrence Nos. [REDACTED] from his CRD records, \$1.00 in compensatory damages, and such other and further relief deemed just and equitable.

During the expungement hearing, Claimant withdrew his request for \$1.00 in compensatory damages.

In the Statement of Answer Respondent requested assessment of all forum fees in this matter to Claimant.

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

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

On or about March 15, 2017, Claimant filed with FINRA Office of Dispute Resolution proof of service of the Statement of Claim and notice of the expungement hearing upon the underlying customer in Occurrence No. [REDACTED] and advised him of his right to participate in the expungement hearing scheduled for May 15, 2017.

Claimant made an effort to serve the underlying customer who filed the underlying complaint in connection with Occurrence No. [REDACTED] however, the customer is deceased. Claimant filed a Proof of Death as an Exhibit for the Arbitrator's consideration.

The Arbitrator conducted a recorded telephonic hearing on May 15, 2017, so the parties could present oral argument and evidence on Claimant's request for expungement.

The customer in Occurrence No. [REDACTED] did not participate in the recorded telephonic expungement hearing and did not contest the request for expungement.

Respondent was present at the recorded telephonic expungement hearing and did not dispute any of Claimant's testimony and expressly stated it did not oppose either request for expungement.

The Arbitrator reviewed the BrokerCheck® Report for Claimant with Claimant and confirmed that no other customer complaints have been filed against Claimant in his 18 years as a financial advisor other than the two Occurrences which were the subject of the expungement hearing. The Arbitrator further reviewed the settlement documents for Occurrence No. [REDACTED] considered the amount of payment made to any party, which he determined was considerably less than the amount requested and probably less than the cost of defending the claim, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on the customer not opposing the request for expungement, Claimant did not participate in the settlement discussions, and Claimant did not contribute to the settlement amount.

The Arbitrator noted that there was no settlement agreement entered in connection with Occurrence No. [REDACTED]

The Arbitrator noted that Claimant did not previously file a claim requesting expungement of the same disclosures in the CRD.

In recommending expungement the Arbitrator relied upon the following documentary or other evidence: the pleadings and all exhibits as well as the testimony provided during the expungement hearing.

The Arbitrator has provided an explanation of his decision in this award. The explanation is for the information of the parties only and is not precedential in nature.

### AWARD

After considering the pleadings, the testimony and evidence presented at the recorded telephonic hearing, and the post-hearing submissions (if any), the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. The Arbitrator recommends the expungement of all references to Occurrence Nos. [REDACTED] from registration records maintained by the CRD for Claimant (CRD# [REDACTED]), with the understanding that, pursuant to Notice to Members 04-16, Claimant 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 of Arbitration Procedure (the "Code"), the Arbitrator has made the following Rule 2080 affirmative finding of fact with respect to both Occurrences:

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

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

With respect to Occurrence No. [REDACTED], Claimant served as the primary advisor for the customer's account from May 2006 until October 2006. The investment at issue in this dispute (Lehman Brothers preferred stock) was purchased in February 2008 and was recommended by another financial advisor at the firm. The customer submitted his complaint to Respondent on September 16, 2008, naming Claimant in error and specifically referencing the investment at issue. The customer later acknowledged by email to Respondent that he had erroneously identified Claimant in his email and that it was, in fact, another financial advisor who had advised Claimant regarding the Lehman Brothers investment. Respondent had earlier reported the complaint on Claimant's BrokerCheck Report. Respondent agreed that it was another financial advisor and not Claimant who had advised the customer regarding the Lehman Brothers investment.

With respect to Occurrence No. [REDACTED] the customer was an experienced investor who was well-versed in preferred stocks. The investment at issue in this dispute was a Fannie Mae 8.25% Non-Cumulative Series T preferred stock. The customer

had requested that Claimant send him every new preferred stock offering that came to the market and he would usually purchase such offerings directly, with no discussion with Claimant regarding such offerings. The customer had previously purchased other preferred stock offerings including Allianz, Bank of America, Citigroup and ING Group. Claimant had attempted to solicit other investment offerings with the customer but he declined, stating "I only invest in things I understand." The Fannie Mae offering became available because it had been underwritten and recommended by Respondent. Claimant merely sent the customer the information and prospectus, as per the customer's directive. Claimant did not recommend the disputed Fannie Mae investment to the customer. Claimant had no discussion with the customer prior to his purchase and therefore did not make any representations or misrepresentations regarding the disputed investment. No sales promotional activities were engaged in by Claimant regarding the disputed investment. The customer's complaint and filing for FINRA arbitration were lodged against and settled by Respondent. The basis of the customer's complaint was that Respondent "knew or should have known that Fannie Mae was massively undercapitalized." The customer listed several alleged misrepresentations "authored by Respondent or adopted by Respondent in connection with the underwriting [of Fannie Mae stock]." Claimant was not named in the complaint and was not in the position to have engaged in the alleged misrepresentation, as the complaint hinged on the position of the Respondent as underwriter of Fannie Mae preferred shares.

2. Any and all claims for relief not specifically addressed herein 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 |
|--------------------------|------------|

*\*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 | = \$ 150.00 |
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#### **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(s), including a pre-hearing conference with the arbitrator(s) that lasts four (4) hours or less. Fees associated with these proceedings are:

|  |            |
|--|------------|
| One (1) hearing session on expungement request @ \$50.00/session | = \$ 50.00 |
| Hearing Date: May 15, 2017 1 session                             |            |
| <hr/>  |            |
| Total Hearing Session Fees                                       | = \$ 50.00 |

The Arbitrator has assessed the entire \$50.00 hearing session fee to Claimant.

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

**ARBITRATOR**

Edward R. Niederriter

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Sole 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.

**Arbitrator's Signature**



Edward R. Niederriter  
Sole Public Arbitrator



Signature Date

5/17/17

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