

AWARD

FINRA Office of DISPUTE RESOLUTION

CASE #: [REDACTED]

[REDACTED]. (Claimant) vs. Morgan Stanley & Co., LLC (Morgan Stanley) and UBS Financial Services Inc. (UBS)

REPRESENTATION OF PARTIES:

For Claimant: Dochter Kennedy, MBA, JD, AdvisorLaw LLC, Broomfield, Colorado.

For Morgan Stanley: Lesley V. Tepper, Esq., Morgan Stanley Wealth Management Legal and Compliance Division, San Francisco, California.

For UBS: Bryce Cullinane, Esq., Keesal, Young & Logan, Long Beach, California.

NATURE OF DISPUTE: Associated Person vs. Members

Statement of Claim filed on or about: October 24, 2016.

Statement of Answer filed by Morgan Stanley on or about: January 7, 2017.

Statement of Answer filed by UBS on or about: December 28, 2016.

CASE SUMMARY: Claimant asserted claims seeking the expungement of customer dispute occurrence numbers [REDACTED] and [REDACTED]. Customer dispute occurrence number [REDACTED] relates to the customer's ("Dr. P") purchase of Class B mutual funds, bonds, and unit investment trusts. Customer dispute occurrence number [REDACTED] relates to the performance of certain equity positions in the customer's ("Mr. C") account.

In the Statement of Answer, Morgan Stanley does not oppose Claimant's request for expungement and objects to the claim to the extent that it alleges that Morgan Stanley engaged in any wrongdoing.

In the Statement of Answer, UBS stated that it will not oppose Claimant's expungement request of a pre-arbitration customer complaint against UBS by Mr. C, which has been reported on Claimant's Central Registration Depository ("CRD") record.

RELIEF REQUESTED: In the Statement of Claim, Claimant requested:

1. Expungement of occurrence numbers [REDACTED] and [REDACTED] from his CRD record pursuant to FINRA Rule 2080(b)(1)(A) as the claim, allegation or information is factually impossible or clearly erroneous;
2. Expungement of occurrence numbers [REDACTED] and [REDACTED] from his CRD record pursuant to FINRA Rule 2080(b)(1)(C) as the claim, allegation or information is false;
3. Damages in the amount of \$1.00 from the Respondents for their part in contributing to the Claimant's injury; and
4. Any and all other relief that the Arbitrator deems just and equitable.

In its Statement of Answer, Morgan Stanley stated that it does not oppose Claimant's request for the Arbitrator to recommend expungement of Dr. P's complaint from

Claimant's CRD and requested denial of any request for damages against Morgan Stanley.

In its Statement of Answer, UBS stated that it will not oppose Claimant's request for expungement of Mr. C's customer complaint from Claimant's CRD.

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

The Arbitrator conducted recorded telephonic hearings on May 3, 2017 and May 10, 2017 so the parties could present oral argument and evidence on Claimant's request for expungement. Claimant withdrew his request for damages in the amount of \$1.00 from Respondents at the close of the May 10, 2017 expungement hearing.

Mr. C attended both telephonic expungement hearings, and presented documents and oral testimony under oath in opposition to Claimant's request for expungement. Dr. P did not attend. An effort was made by Claimant to inform Dr. P of the expungement hearing and it was discovered that Dr. P is deceased.

The Arbitrator reviewed the BrokerCheck® Report for Claimant. The Arbitrator noted that there is no settlement agreement regarding occurrence number [REDACTED] and that Claimant did not previously file a claim requesting expungement of the same disclosure in the CRD.

In recommending expungement of occurrence number [REDACTED], the Arbitrator relied upon the following documentary or other evidence: Greenberg Taurig's letter to Dr. P discussing the situation in response to Dr. P's complaint and denying his claim; and Claimant's testimony under oath at the May 10, 2017 expungement hearing.

AWARD: The Arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Claimant's request for expungement of customer dispute occurrence number [REDACTED] is denied.
2. The Arbitrator recommends the expungement of all references to customer dispute occurrence number [REDACTED] from registration records maintained by the 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 findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

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

The Arbitrator determined that the purchase of the mutual funds was consistent with the customer's objectives and goals. Claimant and Morgan Stanley did not employ market timing as an investment strategy and there was never a discussion of an exit strategy during their many meetings. Morgan Stanley told Dr. P that the mutual funds were purchased at other brokerage firms prior to opening his accounts at Morgan Stanley. Claimant and the customer communicated frequently (sometimes monthly and at least quarterly) during the duration of the account. During the expungement hearing, the Arbitrator was told that at the time of Dr. P's account Morgan Stanley charged customers over 70 years old no backend fees for Class B mutual funds.

FEES: Pursuant to the Code of Arbitration Procedure, 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 parties, Morgan Stanley and UBS are assessed the following:

Morgan Stanley

Member Surcharge = \$150.00

UBS

Member Surcharge = \$150.00

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:

One (1) pre-hearing session with a single arbitrator @ \$50.00/session = \$ 50.00
Pre-hearing conference: March 6, 2017 1 session

Two (2) hearing sessions on expungement request @ \$50.00/session = \$100.00
Hearing Dates: May 3, 2017 1 session
May 10, 2017 1 session

Total Hearing Session Fees = \$150.00

The Arbitrator has assessed \$150.00 of the hearing session fees to Claimant.

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

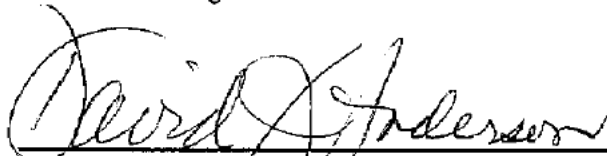
ARBITRATOR

David J. Anderson

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



David J. Anderson
Sole Public Arbitrator



Signature Date

June 12, 2017
Date of Service (For FINRA-ODR office use only)