

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant
[REDACTED]

Case Number: [REDACTED]

vs.

Respondents
Citigroup Global Markets, Inc.
Morgan Stanley

Hearing Site: Washington, D.C.

Nature of the Dispute: Associated Person vs. Members

REPRESENTATION OF PARTIES

For Claimant [REDACTED]: Armin Sarabi, Esq., AdvisorLaw LLC, Broomfield, Colorado.

For Respondent Citigroup Global Markets, Inc. ("Citigroup"): David I. Hantman, Esq., Bressler, Amery & Ross, P.C., New York, New York.

For Respondent Morgan Stanley: Chan H. Nam, Esq., Morgan Stanley Wealth Management, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: February 14, 2017.

[Amended] Statement of Claim filed on or about: March 22, 2017.

[REDACTED] signed the Submission Agreement: February 14, 2017.

Statement of Answer filed by Respondent Citigroup on or about: April 10, 2017.

Citigroup Global Markets, Inc. signed the Submission Agreement: April 17, 2017.

Statement of Answer filed by Respondent Morgan Stanley on or about: April 10, 2017.

Morgan Stanley signed the Submission Agreement: April 10, 2017.

CASE SUMMARY

In the Statement of Claim, as amended, Claimant asserted the cause of action of inaccurate reporting on his Central Registration Depository ("CRD") records. The cause of action relates to three customer complaints, Occurrence Nos. [REDACTED], [REDACTED] and [REDACTED], which were recorded by Respondents on Claimant's CRD records.

In its Statement of Answer, Respondent Citigroup denied any allegations of wrongdoing and stated that it does not oppose the requested expungement relief.

In its Statement of Answer, Respondent Morgan Stanley denied that it owes any monetary damages to Claimant and stated that it takes no position on the expungement request of Occurrence No. [REDACTED] from Claimant's CRD records.

RELIEF REQUESTED

In the Statement of Claim, as amended, Claimant requested \$1.00 in compensatory damages, expungement of all references to Occurrence Nos. [REDACTED], [REDACTED] and [REDACTED] from his CRD record, and any and all other relief deemed just and equitable by the Arbitrator.

In its Statement of Answer, Respondent Citigroup requested that the Arbitrator assess all fees against Claimant.

In its Statement of Answer, Morgan Stanley did not delineate a relief request.

OTHER ISSUES CONSIDERED AND DECIDED

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

On or about July 20, 2017, Claimant filed with FINRA Office of Dispute Resolution proof of service of the Statement of Claim to the underlying customers in the underlying complaints, and advised the customers of their right to participate in the expungement hearing scheduled for September 15, 2017.

The Arbitrator conducted a recorded telephonic hearing on September 15, 2017, so the parties could present oral argument and evidence on Claimant's request for expungement. Respondents participated in the expungement hearing. Respondent Citigroup did not oppose Claimant's request for expungement and Respondent Morgan Stanley took no position with respect to Claimant's request for expungement. The customers in the underlying complaints did not participate in the expungement hearing and did not submit any written objections to the expungement request. At the hearing, Claimant withdrew his request for \$1.00 in compensatory damages.

In recommending expungement the Arbitrator relied upon the following documentary or other evidence: the pleadings; Claimant's BrokerCheck report; Claimant's testimony at the hearing regarding [REDACTED]; Claimant's testimony and Exhibit 4 - Citi Smith Barney letter to Customer, dated April 21, 2009, Exhibit 7 - AXA Distributors, LLC letter to Claimant, dated February 7, 2008 and Exhibit 9 - Complaint – Letter of Instruction from Customer, dated November 5, 2008 to the Statement of Claim regarding Occurrence [REDACTED]; and Claimant's testimony and Exhibit 14 - Letter on behalf of Customer to Respondent Morgan Stanley, dated May 11, 2010 to the Statement of Claim regarding Occurrence [REDACTED].

The Arbitrator noted that Claimant did not previously file a claim requesting expungement of the same disclosures in the CRD and that there were no settlements in the underlying customer complaints.

The Arbitrator has provided an explanation of her 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, 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], [REDACTED] and [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 findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; and

The claim, allegation, or information is false.

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

Occurrence No. [REDACTED] - The complaint alleged that the annuity recommended for the client was "unsuitable," but in fact the annuity was entirely suitable given the client's needs and intentions; indeed, both the client and his beneficiaries after he died benefited significantly from having purchased the recommended annuity.

Furthermore, the complaint alleged that Claimant "misrepresented" the nature of the annuity, but it is clear from the record that Claimant was not misleading and provided full information to the client prior to the client purchasing the annuity. After the complaint was made, Respondent Citigroup (Claimant's employer at the time) investigated the complaint and denied it; thereafter, the complaint was not pursued; there was no settlement involved in this case.

Therefore, because the annuity was entirely suitable and the client was provided full information prior to purchasing the annuity, the allegation that the annuity was "unsuitable" and "misrepresented" is clearly erroneous and false, and Occurrence No. [REDACTED] should be expunged.

Occurrence No. [REDACTED] - The complaint alleged that the purchase by Claimant on behalf of the client of the AXA Annuity was “not consistent” with the client’s objectives and was purchased “without authorization” by the client.

As the record shows, the AXA Annuity was actually consistent with the client’s objectives to have greater liquidity for the potential purchase of property; therefore, the allegation that the AXA Annuity was “not consistent” with the client’s stated objectives is clearly erroneous and false.

In addition, the client’s complaint alleged that the AXA Annuity was purchased “without authorization” by the client. Neither the governing law nor broker practice at the time required a client’s signature in order to purchase this annuity, and an oral request by the client was sufficient to make the purchase; for this reason, all sides agree that in this case there was no written authorization to purchase this annuity. However, the record shows that the client did indeed orally authorize the purchase and had notice of the purchase immediately after the annuity was purchased. Specifically, within days of the AXA Annuity being purchased, the client received a paper copy of the contract for the AXA Annuity notifying her of the purchase, and her monthly statements showed that the AXA Annuity had been purchased. Moreover, the AXA Annuity provided a 30-day cancellation period which the client could have exercised to cancel the annuity if she had not intended to purchase it or had changed her mind. It was only after the market continued its decline in 2008 that the client filed her allegation that the AXA Annuity had been purchased “without authorization.” The overwhelming evidence shows that the client did indeed authorize the purchase, and that she had virtually immediate and continuing notice that the AXA Annuity had been purchased. Her 8-month delay in complaining that it had been purchased “without authorization” is therefore clearly erroneous and false.

After the client filed her complaint with Respondent Citigroup (Claimant’s employer at the time), the claim was denied and the client did not pursue the claim any further. There was no settlement in this case. Because the AXA Annuity was consistent with the client’s objectives and purchased with her authorization – contrary to the claims made by the client – the claim is false and clearly erroneous, and therefore Occurrence No. [REDACTED] should be expunged.

Occurrence No. [REDACTED] - The claim alleged that the client’s EFT investment in the SRS fund was “unsuitable” for the client. The client was an experienced investor who wanted to invest 5% of his portfolio in an investment that would serve as a hedge in the volatile 2008 markets; Claimant recommended, and the client agreed, to purchase the SRS fund which was an EFT that would serve that purpose. During the 2008 recession, the client’s SRS investment allowed the client’s portfolio to lose less value than the market average. Some months later in June 2009, FINRA issued Regulatory Notice 09-31 warning of potential problems with EFTs; shortly thereafter, the client filed a claim that the SRS investment was “unsuitable.” However, none of the potential problems noted in FINRA Regulatory Notice 09-31 had actually occurred with the client’s own EFT investment. Respondent Morgan Stanley (Claimant’s employer at the time) investigated the claim and it was denied. The client did not pursue the claim any further and there was no settlement in this case.

Because the client's purchase of the SRS investment served exactly the investment purpose that it was intended to serve by hedging against market volatility, and because the client understood the purpose of this EFT investment, the claim that the SRS was "unsuitable" is false and clearly erroneous. Therefore, Occurrence No. [REDACTED] should be expunged.

2. Any and all relief not specifically addressed herein is 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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as parties, Respondents Citigroup and Morgan Stanley are assessed the following:

Respondent Citigroup	
Member Surcharge	= \$150.00

Respondent Morgan Stanley	
Member Surcharge	= \$150.00

Discovery-Related Motion Fee

Fees apply for each decision rendered on a discovery-related motion.

One (1) decision on a discovery-related motion on the papers with one (1) arbitrator @ \$200.00/decision	= \$200.00
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Claimant submitted one (1) discovery-related motion

Total Discovery-Related Motion Fees	= \$200.00
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The Arbitrator has assessed the entire discovery-related motion fee of \$200.00 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(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

ARBITRATOR

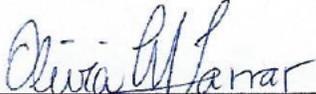
Olivia Milbank Farrar

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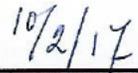
Sole Public Arbitrator

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



Olivia Milbank Farrar
Sole Public Arbitrator



Signature Date

October 2, 2017

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