

AWARD

FINRA Office of DISPUTE RESOLUTION

CASE #: [REDACTED]

[REDACTED] (Claimant) vs. Citigroup Global Markets, Inc. (Respondent)

REPRESENTATION OF PARTIES:

For Claimant [REDACTED]: Docthor Kennedy, MBA, J.D. and Owen Harnet, Esq., AdvisorLaw LLC, Broomfield, Colorado.

For Respondent Citigroup Global Markets, Inc.: David I. Hantman, Esq., Bressler Amery & Ross, New York, New York.

NATURE OF DISPUTE: Associated Person vs. Member

Statement of Claim filed on: February 20, 2017.

Amended Statement of Claim filed on: May 1, 2017.

Statement of Answer to Amended Statement of Claim filed on: May 19, 2017.

CASE SUMMARY: Claimant requested expungement of two occurrences from his Central Registration Depository ("CRD") record ("Underlying Claims"). The occurrences consisted of one customer complaint (occurrence number [REDACTED]) and one arbitration claim (occurrence number [REDACTED]).

RELIEF REQUESTED:

In the Amended Statement of Claim, Claimant requested:

1. Expungement of the Underlying Claims 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 the Underlying Claims from his CRD record pursuant to FINRA Rule 2080(b)(1)(C) finding the claim, allegation or information is false.
3. An award of compensatory damages in the amount of \$1.00 from Respondent; and
4. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer to the Amended Statement of Claim, Respondent advised that while it does not oppose Claimant's request for expungement, it denies any allegations of wrongdoing and has confirmed with counsel for Claimant that Claimant does not assert any cause of action against Respondent, nor does he seek any affirmative relief from Respondent.

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

1. The Arbitrator recommends the expungement of all references to the Underlying Claims, namely occurrence numbers [REDACTED] and [REDACTED] from Claimant [REDACTED] (CRD# [REDACTED] registration records maintained by the CRD, with the understanding that pursuant to Notice to Members 04-16, Claimant [REDACTED]

[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 of Arbitration Procedure ("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 registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and,

The claim, allegation, or information is false.

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

The sole claim in this action was for expungement of two (2) occurrences reflected on Claimant's CRD record. The first, occurrence number [REDACTED], involved a complaint by Ms. J that it was not prudent for Claimant to have her fully invested in equities at the time of both the "Dotcom crash" of 2000 and the crash following the events of 9/11. Ms. J complained to Claimant's branch in August 2002, but did not pursue a formal claim or otherwise seek relief.

Claimant did not pursue expungement earlier because he was unaware, until recently, that this procedure was available to him. Because more than 14 years had passed since this complaint first appeared on Claimant's record, there were no customer account documents available for review or consideration by this tribunal.

The testimony, however, was uncontradicted that Ms. J's account was invested in a diversified array of dividend paying blue chip securities, such as Proctor & Gamble, Merck and others. It was also undisputed that Claimant periodically met with Ms. J to discuss her investment portfolio, worth roughly \$100,000 at the outset, and that she knowingly and voluntarily approved the investment course Claimant was pursuing to achieve conservative to moderate growth. This course was both reasonable and prudent because Ms. J had liquid assets in the form of Certificate of Deposits and other insured cash accounts in the \$300,000 to \$400,000 range at various banks and other financial institutions outside of her account with Claimant.

The total loss in Ms. J's account, after both of the tumultuous events of the early 2000s, was \$10,000 or 10% of the \$100,000 she initially had invested. Given the precipitous drop in the markets during these times, it cannot be reasonably

gainsaid that Ms. J's account was nothing more than a victim of the vicissitudes of the markets, as opposed to a victim of imprudent investment advice, as she clearly erroneously and/or falsely claimed.

The second item for which Claimant seeks expungement is occurrence number [REDACTED]. This occurrence arises out of an arbitration claim with the underlying arbitration case no. 10-01361 filed by Mr. and Mrs. S in which Claimant's employer, Morgan Stanley, was liable for losses in their account in connection with the "Debt Crisis" of 2008-2009. Notably, Mr. and Mrs. S did not name or otherwise claim that Claimant was in anyway personally responsible for their loss. Rather, Mr. and Mrs. S claimed that Morgan Stanley, as an institution, was aware, and was itself part, of the near collapse of U.S. and Global Financial Markets because of its own and other institutions' reckless sales of, and investments in, collateralized debt obligations that wreaked havoc on their balance sheets resulting in a near complete disruption of the credit and financial markets across the globe. (Ex. 9, Statement of Claim for Case [REDACTED]).¹ In the face of a loss of over \$1 million, Morgan Stanley settled with Mr. and Mrs. S for \$120,000, barely 10% of their total loss. Significantly, that loss was approximately the same percentage amount by which the S&P 500 declined between 2007 and the end of 2008, when Mr. and Mrs. S transferred their account out from Morgan Stanley. (Ex. 11, Confidential Settlement Agreement and Ex. 9, Statement of Claim for case 10-01361.)

While it is technically true that Claimant was the broker in charge of the account on which Mr. and Mrs. S's claim was based, there was no allegation that anything Claimant did or failed to do was the cause of or contributed to their loss. Therefore, expungement of this occurrence might be appropriate under the rubric of "the sales person was not involved in the alleged sales practice violation." On the other hand, the evidence is more than compelling that Mr. and Mrs. S's claim, to the extent it mars Claimant's records, is clearly erroneous and/or false.

2. Any and all claims for relief not specifically addressed herein are denied.

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

On May 11, 2017, Parties filed a stipulation for the removal of the Statement of Claim dated February 20, 2017 from the records.

On June 6, 2017, the Arbitrator issued an order for service of the claim to the customers in the Underlying Claims and for production of any and all documents, including complaints, responses, settlements, correspondence with any applicable agency, the specific postings to which expungements are sought, and any other such documents regarding the claims in the matter.

¹ Mr. and Mrs. S's claimed cure for this impending calamity was for Morgan Stanley to have recommended its investors go all cash, which would have likely had equally, or perhaps more, calamitous effects on the equity markets.

On June 21, 2017, Claimant provided notice that the customers in the Underlying Claims had been served with the Statement of Claim.

On October 19, 2017, Claimant provided notice that the customers in the Underlying Claims had been served with notice of the expungement hearing.

On October 31, 2017, Claimant provided the most recent copy of Claimant's BrokerCheck® Report.

The Arbitrator conducted a recorded telephonic hearing on November 20, 2017 so the parties could present oral argument and evidence on Claimant's request for expungement. The customers in the Underlying Claims did not appear at the expungement hearing or submit a response to the request for expungement.

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

The Arbitrator reviewed the settlement documents in connection to Mr. and Mrs. S's arbitration claim and considered the amount of payments made to any party and any other terms and conditions of settlement. The Arbitrator determined that Claimant did not contribute to the settlement, and that the settlement agreement was not conditioned upon any customer's agreement not to oppose expungement.

The Arbitrator determined that there were no settlement agreements regarding Ms. J's complaint.

The Arbitrator noted that Claimant did not previously request expungement of the Underlying Claims.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's BrokerCheck® Report, Claimant's oral testimony, the Amended Statement of Claim by Mr. and Mrs. S dated May 11, 2010, and the Confidential Settlement Agreement and General Release for Mr. and Mrs. S signed October 24, 2011.

OTHER FEES: Respondent has paid to FINRA Office of Dispute Resolution the \$150.00 Member Surcharge previously invoiced.

FINRA 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.

Hearing Session Fees and Assessment

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) Pre-hearing session with a single arbitrator @ \$50.00/session	= \$50.00
Pre-hearing conference: September 7, 2017 1 session	
One (1) Hearing session on expungement request @ \$50.00/session	= \$50.00
Hearing Date: November 20, 2017 1 session	
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Total Hearing Session Fees	=\$100.00

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

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

ARBITRATOR

Mark S. Priver

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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

Mark S. Priver

November 29, 2017

Mark S. Priver
Sole Public Arbitrator

Signature Date

November 30, 2017
Date of Service (For FINRA-ODR office use only)