

**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 Smith Barney

Hearing Site: Baltimore, Maryland

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant [REDACTED]: Armin Sarabi, Esq. and Dochter Kennedy, MBA, J.D.,  
AdvisorLaw, LLC, Broomfield, Colorado.

For Respondent Morgan Stanley Smith Barney ("MSSB"): Joseph A. Sack, Esq.,  
Morgan Stanley Smith Barney, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: April 12, 2017.

[REDACTED] signed the Submission Agreement: April 12, 2017.

Statement of Answer filed by Respondent on or about: May 31, 2017.

MSSB signed the Submission Agreement: May 31, 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 customer complaint (Occurrence No. [REDACTED] (the "Complaint"), which was recorded on Claimant's CRD records.

Unless otherwise specified in the Statement of Answer, Respondent did not oppose Claimant's request for expungement.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested: expungement of the Complaint from his CRD records pursuant to FINRA Rule 2080(b)(1)(A), as the claim, allegation, or information is factually impossible or clearly erroneous; expungement of the Complaint from his CRD records pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false; an award of compensatory damages in the amount of \$1.00 from

Respondent; and any and all other relief that the Arbitrator deemed just and equitable. In the Statement of Answer, Respondent did not delineate a specific relief request.

### OTHER ISSUES CONSIDERED AND DECIDED

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

On or about August 24, 2017, Claimant filed with FINRA Office of Dispute Resolution an Affidavit of Service upon the underlying customer (the "Customer") of two letters dated July 31, 2017, enclosing the Statement of Claim, and August 21, 2017, notifying the Customer of the expungement hearing scheduled for November 10, 2017, and of the Customer's right to participate in the hearing.

The Arbitrator conducted a recorded telephonic hearing on November 10, 2017, so the parties could present oral argument and evidence on Claimant's request for expungement. The Customer did not participate in the expungement hearing and did not contest the request for expungement. Respondent participated in the expungement hearing and did not contest Claimant's request for expungement.

The Arbitrator reviewed the BrokerCheck® Report for Claimant and the settlement documents, considered the amount of payments made to any party, 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. The Arbitrator also noted that Claimant did not contribute to the settlement amount.

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

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's Statement of Claim; Respondent's Statement of Answer; and Claimant's Exhibits 1-10, which included, among other things, the Customer's email to Claimant's counsel dated November 11, 2017.

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

1. Claimant's request for compensatory damages in the amount of \$1.00 is denied.
2. The Arbitrator recommends the expungement of all references to the Complaint (Occurrence No. [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 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:

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

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

Claimant filed an eight (8) page Statement of Claim in which he averred that Respondent MSSB failed to execute certain sales on behalf of the Customer. In addition, the Customer made a written complaint to Respondent MSSB alleging churning of his accounts. Respondent MSSB denied the churning claim, but paid a settlement amount to the Customers, pursuant to a General Release and Settlement Agreement (the "Agreement") executed by the Customer on June 6, 2014, which ostensibly was for the late sale. Claimant was not named as a party to the Agreement, nor did he make any contribution to the settlement.

The Arbitrator reviewed Claimant's FINRA BrokerCheck® Report, the Agreement and the email from the Customer to Claimant's counsel dated November 11, 2017, in which the Customer stated "I do NOT oppose the expungement relative to FINRA". Respondent's counsel did not object to the introduction of the email from the Customer as Claimant's Exhibit # 10, nor did Respondent, through its counsel, object to Claimant's expungement request.

The Arbitrator found that there was no churning, as claimed by the Customer. This was based on the settlement basis of failure to execute, not churning; the testimony of Claimant as to the chain of events; and the fact that the Customer directed all purchases and sales. In light of this determination in conjunction with the contents of the Statement of Claim, Claimant's BrokerCheck® Report, the testimony of Claimant, and the Customer's email reflecting that he did not oppose Claimant's request for expungement, it is apparent that the claim by the Customer is factually impossible or erroneous.

3. 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 MSSB is assessed the following:

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(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: July 31, 2017 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00  
Hearing Date: November 10, 2017 1 session

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Total Hearing Session Fees = \$ 100.00

The Arbitrator has assessed \$75.00 of the hearing session fees to Claimant.

The Arbitrator has assessed \$25.00 of the hearing session fees to Respondent.

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

**ARBITRATOR**


Joseph J. Dougherty

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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**

  
\_\_\_\_\_  
Joseph J. Dougherty  
Sole Public Arbitrator

11/30/17  
\_\_\_\_\_  
Signature Date

NOVEMBER 30, 2017

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