

## **AWARD**

FINRA Office of DISPUTE RESOLUTION

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CASE #: [REDACTED]

[REDACTED] (Claimant) vs. Morgan Stanley, Morgan Stanley DW Inc. and Prudential Equity Group, LLC (Prudential)

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### **REPRESENTATION OF PARTIES:**

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

For Respondents Morgan Stanley and Morgan Stanley DW Inc. (hereinafter collectively referred to as Morgan Stanley): Nicholas Y. Lin, Esq., Morgan Stanley, San Francisco, California.

For Respondent Prudential Equity Group, LLC: Alan S. Brodherson, Esq., Law Offices of Alan S. Brodherson, New York, New York.

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**NATURE OF DISPUTE:** Associated Person vs. Members

Statement of Claim filed on or about: June 20, 2017.

Morgan Stanley filed a Statement of Answer on: August 22, 2017.

Prudential filed a Statement of Answer on: August 15, 2017.

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**CASE SUMMARY:** Claimant asserted a claim seeking expungement of five occurrence numbers ("Underlying Claims") from her Central Registration Depository ("CRD") record: three NASD arbitrations, occurrence numbers [REDACTED] (NASD Arbitration [REDACTED]), [REDACTED] (NASD Arbitration [REDACTED]) and 1216574 (NASD Arbitration 05-04825); and two customer complaints, occurrence numbers [REDACTED] and [REDACTED].

In its Statement of Answer, Morgan Stanley advised that it does not oppose Claimant's request for expungement.

Unless specifically admitted in its Statement of Answer, Prudential denied the allegations of wrongdoing made in the Statement of Claim. Prudential advised that it took no position as to Claimant's expungement request.

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

1. Expungement of the Underlying Claims from her CRD record pursuant to FINRA Rule 2080(b)(1)(A), as the claims, allegations, or information are factually impossible or clearly erroneous;
2. Expungement of the occurrences numbers [REDACTED] and [REDACTED] from her CRD record pursuant to FINRA Rule 2080(b)(1)(B), as the Claimant was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds;
3. Expungement of the Underlying Claims from her CRD record pursuant to FINRA Rule 2080(b)(1)(C), as the claims allegations, or information are false;

4. Damages in the amount of \$1.00 from Respondents; and
5. Any and all other relief that the Arbitrator deems just and equitable.

In its Statement of Answer, Morgan Stanley requested:

1. Claimant's request for \$1.00 in damages against Morgan Stanley be denied; and
2. All forum fees be assessed against Claimant.

In its Statement of Answer, Prudential requested:

1. Claimant's request for \$1.00 in damages against Prudential be denied; and
2. All forum fees be assessed against Claimant.

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

Prudential did not file with FINRA Office of Dispute Resolution a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and, having answered the claim and appeared at the hearing, is bound by the determination of the Arbitrator on all issues submitted.

On August 22, 2017, Claimant provided notice that the Statement of Claim was served on: the customers in occurrence number [REDACTED] (Mr. and Mrs. CH), the customers in occurrence number [REDACTED] (Mr. and Mrs. RH), the customer in occurrence number [REDACTED] (Ms. W), the customer in occurrence number [REDACTED] (Mr. S), and the customer in occurrence number [REDACTED] (Ms. L), hereinafter collectively referred to as the "Underlying Customers."

On August 24, 2017, Claimant filed an Affidavit of Service signed by Claimant's counsel advising that the Underlying Customers were served with the Statement of Claim.

On November 6, 2017, Ms. L filed an opposition to Claimant's request for expungement of occurrence number [REDACTED] and requested to be informed of the hearing on this matter.

On December 1, 2017, Claimant provided notice that Claimant had served the Underlying Customers with the date and time of the expungement hearing and had advised them that they have the opportunity to offer responses and/or participate in the expungement hearing.

The Arbitrator conducted a recorded telephonic hearing on February 20, 2018 so the parties could present oral argument and evidence on Claimant's request for expungement.

At the hearing, Claimant withdrew her request for \$1.00 in damages against Respondents.

Morgan Stanley and Prudential participated in the expungement hearing and did not contest the request for expungement. The Arbitrator found that the Underlying Customers had notice of the expungement hearing and did not participate, including Ms. L who had submitted a written statement opposing the expungement.

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

Occurrence Numbers [REDACTED], [REDACTED], [REDACTED], and [REDACTED]

The Arbitrator reviewed 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 settlements were not conditioned on the customers not opposing the request for expungement. The Arbitrator also noted that Claimant did not contribute to the settlement amounts.

In recommending expungement the Arbitrator relied upon the following documentary or other evidence: Claimant's testimony at the hearing and the following exhibits:

- Claimant's BrokerCheck Report and CRD Individual Snapshot Report, dated June 20, 2017;
- Prudential response letter to Mr. and Mrs. CH complaint, dated August 19, 1992;
- Claimant's letter to State of Washington, Division of Securities regarding CRDs, dated October 22, 1998;
- Mr. and Mrs. CH Statement of Claim, dated April 30, 1992;
- Journal of Accountancy Article, "What Happened to Limited Partnerships?" dated June 30, 1007;
- Mr. and Mrs. CH Release dated February 18, 1993;
- Mr. and Mrs. RH Statement of Claim against Prudential, not dated;
- Mr. RH New Account Form for Prudential dated October 23, 1985;
- Mr. and Mrs. RH New Account Form for Prudential, dated January 31, 1986;
- Answer letter by Prudential for NASD to Mr. and Mrs. RH's Statement of Claim dated May 14, 1993;
- Mutual Release and Agreement of Settlement between Mr. and Mrs. RH and Prudential dated February 14, 1994;
- Investopedia article, "Dotcom Bubble" not dated;
- Claimant's Email to Ms. L regarding account review dated July 28, 2011;
- Claimant's Email to Ms. L regarding complaint dated December 5, 2011;
- Claimant's Email to Ms. L requesting contact dated December 6, 2011;
- Ms. L's complaint email to Claimant dated December 5, 2011;
- Respondent's letter to Ms. L investigating complaint dated December 13, 2011;
- Settlement Agreement with Ms. L dated December 30, 2011;
- Claimant's email to Respondent regarding Mr. S's Complaint dated July 18-17, 2007;
- Settlement Agreement with Mr. S signed September 8, 2007;
- Ms. W's NASD Statement of Claim;
- Respondent's Statement of Answer to Ms. W's Statement of Claim dated November 30, 2015;
- Settlement Agreement with Ms. W, dated August 3, 2007; and
- Letter to Claimant's counsel from Claimant's branch manager at Morgan Stanley regarding Ms. W's complaint dated February 14, 2018.

The parties present at the hearing have agreed that a handwritten, signed Award may be entered.

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AWARD: The 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 occurrence numbers [REDACTED]; [REDACTED]; [REDACTED]; and [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.

Occurrence Number [REDACTED] (in which Mr. and Mrs. CH are the customers)

Pursuant to Rule 13805 of the Code, the Arbitrator has made the following Rule 2080 affirmative findings of fact: 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 findings based on the following reasons: Claimant was not involved as a financial advisor and did not make recommendations that resulted in allegation of unsuitable investment in limited partnerships.

Occurrence Number [REDACTED] (in which Mr. and Mrs. RH are the customers)

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 false.

The Arbitrator has made the above Rule 2080 findings based on the following reasons: Mr. and Mrs. RH's allegation of unsuitable investment in limited partnerships is false because purchase was made after appropriate due diligence based on needs and circumstances which were monitored over the holding period.

Occurrence Number [REDACTED] (in which Ms. W is the customer)

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: Ms. W's allegation of unauthorized margin trading is clearly erroneous given statements made to Claimant and behavior consistent with such that

decision making on the account was exercised with and upon the guidance of a former boyfriend.

Occurrence Number [REDACTED] (in which Mr. S is the customer)

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: Mr. S's allegation of failure to follow liquidation instructions on an investment is clearly erroneous as an internal operational error made by back office and not a failure due to Claimant in the ensuing timing issue.

2. Claimant's request for expungement of occurrence number [REDACTED] from her CRD record is denied.
3. Any and all claims for relief not specifically addressed herein are denied.

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OTHER 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, Morgan Stanley, LLC is assessed the following:

Member Surcharge = \$150.00

Accordingly, as a party, Morgan Stanley DW Inc. is assessed the following:

Member Surcharge = \$150.00

Accordingly, as a party, Prudential Equity Group, LLC 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: November 17, 2017 1 session	

One (1) hearing session on expungement request @ \$50.00/session	= \$50.00
Hearing Date: February 20, 2018 1 session	

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Total Hearing Session Fees	= \$100.00
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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.

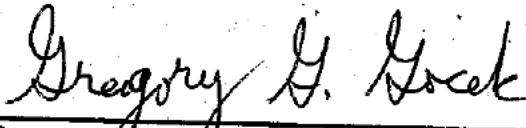
**ARBITRATOR**

Gregory G. Gocek

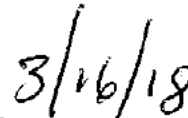
Sole Public Arbitrator

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



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Gregory G. Gocek  
Sole Public Arbitrator



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Signature Date

March 16, 2018  
Date of Service (For FINRA-ODR office use only)