

**Award**  
**FINRA Office of Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondents

Legg Mason Wood Walker, Inc.,  
Morgan Stanley DW, Inc., and  
Capital One Investments, LLC

Hearing Site: Dallas, Texas

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Nature of the Dispute: Associated Person vs. Members

**REPRESENTATION OF PARTIES**

For Claimant ██████████ ("Claimant" or ██████████): Owen Harnett, Esq.,  
AdvisorLaw, LLC, Broomfield, Colorado.

For Respondents Legg Mason Wood Walker, Inc. and Morgan Stanley DW, Inc.: Chan  
Nam, Esq., Morgan Stanley Wealth Management, New York, New York.

For Respondent Capital One Investments, LLC: Todd Ratner, Esq., Todd Ratner, PLC,  
Richmond, Virginia.

**CASE INFORMATION**

Statement of Claim filed on or about: June 27, 2017.

Claimant signed the Submission Agreement: June 27, 2017.

Statement of Answer filed jointly by Respondents Legg Mason Wood Walker, Inc. and  
Morgan Stanley DW, Inc. on or about: August 11, 2017.

Legg Mason Wood Walker, Inc. signed the Submission Agreement: August 11, 2017.

Morgan Stanley DW, Inc. signed the Submission Agreement: August 11, 2017.

Statement of Answer filed by Capital One Investments, LLC on or about: November 29,  
2017.

Capital One Investments, LLC signed the Submission Agreement: November 29, 2017.

**CASE SUMMARY**

Claimant asserted the following cause of action: expungement. Claimant requested  
expungement of customer dispute Occurrence Numbers ██████████, ██████████, ██████████,  
and ██████████ from his records maintained by the Central Registration Depository  
("CRD").

Respondents Legg Mason Wood Walker, Inc. and Morgan Stanley DW, Inc. took no position on [REDACTED] requests for expungement.

Respondent Capital One Investments, LLC did not oppose [REDACTED] requests for expungement.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

Compensatory Damages	\$1.00
Other Non-Monetary Relief	Expungement

In the Statement of Answer, Respondents Legg Mason Wood Walker, Inc. and Morgan Stanley DW, Inc. requested that all fees associated with this matter be assessed solely against Claimant.

In the Statement of Answer, Respondent Capital One Investments, LLC requested that all fees associated with this matter be assessed solely against Claimant.

### **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 23, 2017, Claimant filed Service Letters to Customers with the Statement of Claim and notice of the requests for expungement. On or about August 24, 2017, Claimant filed an Affidavit of Customer Service. On or about September 27, 2017, FINRA received customer R.B.'s correspondence directed to Claimant's counsel upon receipt of notice of the expungement requests and the Statement of Claim. Customer R.B. stated that although [REDACTED] misrepresented facts regarding their prior investments, they would not participate in the expungement hearing or submit written documentation.

On or about October 4, 2017, Claimant made a Request for Arbitration with a Telephonic or Video Expungement Hearing. No response was filed. On or about October 18, 2017, during the Initial Pre-Hearing Conference, all parties agreed that the expungement hearing would be conducted by telephone. On or about January 30, 2018, the Arbitrator granted the request for a telephonic hearing.

On or about November 17, 2017, Claimant filed a Proof of Service for notice to the customers with the date of the expungement hearing and the opportunity to appear and/or submit written documentation.

The Arbitrator conducted a recorded, telephonic hearing on February 5, 2018, so the parties could present oral argument and evidence on [REDACTED] requests for expungement.

Respondents Legg Mason Wood Walker, Inc., Morgan Stanley DW, Inc., and Capital One Investments, LLC did participate in the expungement hearing and did not contest the

request for expungement. The customers did not appear or participate in the expungement hearing. At the hearing, Claimant orally withdrew his request for compensatory damages in the amount of one dollar (\$1.00).

The Arbitrator reviewed the BrokerCheck® Report for [REDACTED]. On the record, counsel testified that after a diligent search, due to the age of the occurrences, the Settlement Agreements were not able to be located. The settlement documents were not available due to the number of years between the time the allegations were made and the date of the expungement hearing. Claimant's Statement of Claim indicated that Claimant's former employers paid nominal sums as settlement for the allegations. Claimant testified on the record, at the hearing, that he was not a party to any of the settlement agreements with any of the customers and did not contribute to the settlement amount.

The Arbitrator noted that [REDACTED] 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 detailed testimony, which addressed each of the four Occurrence Numbers. Claimant's testimony showed that the four allegations were either factually impossible, clearly erroneous or false, and that Claimant was not involved in the investment-related sales practice violations.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. The Arbitrator recommends the expungement of 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.

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 findings based on the following reasons:

During the Expungement Hearing, [REDACTED], Claimant, was questioned by Owen Harnett, Claimant's representative. [REDACTED] testimony covered, in detail, Occurrence Numbers [REDACTED], [REDACTED], and [REDACTED]. For each occurrence, [REDACTED] described how the relationship with each customer originated, the process he used to familiarize himself with the customers' financial condition, investment objectives and risk tolerances. [REDACTED] also explained the considerations he used in recommending securities to the customer.

In his testimony, [REDACTED] addressed the allegations of four former customers.

Occurrence Number [REDACTED]

Mr. [REDACTED] explained that the customer instructed him to open a leveraged account and to purchase highly speculative securities in the account. Mr. [REDACTED] cautioned and fully explained to the customer the details and substantial risks of these investment actions. Losses were realized by the customer in the highly speculative securities while the mutual funds recommended by Mr. [REDACTED] performed well. Mr. [REDACTED] testified that the customer did not follow through with his recommendations on dealing with the substantial securities losses and the ramifications the losses had on the leveraged account. Testimony indicates that Mr. [REDACTED] made suitable recommendations and performed his duties to the customer in a thorough, ethical and professional manner.

Occurrence Number [REDACTED]

Mr. [REDACTED] explained that since the customers' initial investment objective was growth, he recommended a portfolio of top-rated mutual funds, which achieved diversification within a moderate growth asset allocation. The customer's performance expectations were achieved through Mr. [REDACTED]' recommendations. However, later in the relationship, the customer sought higher returns through individual stocks and Initial Public Offerings (IPO). The customers' account was non-discretionary; all individual stock and IPO transactions required the customers' approval. Substantial losses in the individual stocks and IPOs eventually offset gains achieved by the mutual funds. Testimony shows that Mr. [REDACTED] made suitable recommendations to meet the customers' initial investment

objectives and executed only the individual stock and IPO transactions approved by the customer.

Occurrence Number [REDACTED]

Mr. [REDACTED] testimony shows that the customers' investment objectives were growth and speculation with a high-risk tolerance. Mr. [REDACTED] recommended the use of mutual funds to the customer; the customer purchased only one of Mr. [REDACTED] recommendations. The customers' account was non-discretionary; they actively traded individual growth stocks and IPOs. The customers alleged that Mr. [REDACTED] failed to place stop-losses on stock positions when in fact the customer did not instruct Claimant to do so. Testimony shows that Mr. [REDACTED] made suitable recommendations to the customer and performed his duties in a professional manner.

Occurrence Number [REDACTED]

Mr. [REDACTED] testimony shows that his recommendations to the customer were fully discussed and all factors of those recommendations were disclosed. Testimony indicates that the allegations were initiated by a third party who was not privy to Mr. [REDACTED] and the customers initial discussions. [REDACTED] made suitable recommendations and performed his duties in a professional manner.

For all four Occurrences, the Arbitrator has determined that the allegations made against the Claimant are either factually impossible, clearly erroneous, or false and that the registered person was not involved in the alleged investment related sales practice violation. The decisions of the Arbitrator were based upon the Claimant's testimony during the recorded hearing.

2. 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 firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as parties, Legg Mason Wood Walker, Inc., Morgan Stanley DW, Inc., and Capital One Investments, LLC are each 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: October 18, 2017 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00  
Hearing Date: February 5, 2018 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**

David A. Schuler

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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**

/s/ David A. Schuler

David A. Schuler  
Sole Public Arbitrator

March 15, 2018

Signature Date

March 15, 2018

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

**ARBITRATOR**

David A. Schuler

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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**

*David Schuler*

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David A. Schuler  
Sole Public Arbitrator

*3/15/18*

\_\_\_\_\_  
Signature Date

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