

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondents

Moors & Cabot, Inc.
Morgan Stanley DW Inc.

Hearing Site: Boston, Massachusetts

Nature of the Dispute: Associated Person vs. Members

REPRESENTATION OF PARTIES

For Claimant ██████████: Dochter Kennedy, Broomfield, Colorado.

For Respondent Moors & Cabot, Inc.: Michael C. Fee, Esq., Pierce & Mandell, P.C., Boston, Massachusetts.

For Respondent Morgan Stanley DW Inc.: Jeremy S. Winer, Esq. Morgan Stanley, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: August 8, 2017.

Amended Statement of Claim filed on or about: February 8, 2018.

████████████████████ signed the Submission Agreement: August 8, 2017.

Statement of Answer filed by Moors & Cabot, Inc. on or about: December 8, 2017.

Moors & Cabot, Inc. signed the Submission Agreement: December 7, 2017.

Statement of Answer filed by Morgan Stanley DW Inc. on or about: October 18, 2017.

Answer to Amended Statement of Claim filed by Morgan Stanley DW Inc. on or about: March 19, 2018.

Morgan Stanley DW Inc. signed the Submission Agreement: October 17, 2017.

CASE SUMMARY

Claimant asserted the following causes of action: expungement.

Unless specifically admitted in the Statement of Answer, Respondent Moors & Cabot, Inc. denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Respondent Moors & Cabot, Inc. took no position as to Claimants specific requests for expungement.

Respondent Morgan Stanley DW Inc. took no position on Claimant's request for expungement.

RELIEF REQUESTED

In the Statement of Claim and Amended Statement of Claim, Claimant requested expungement of occurrence numbers [REDACTED] and [REDACTED] from his CRD records and \$1.00 in compensatory damages.

In its Statement of Answer, Respondent Moors & Cabot, Inc. requested that the Arbitrator in this matter:

1. deny Claimant's request for damages in the amount of \$1.00;
2. order Claimant to remove exhibits 7 and 10 from the Statement of Claim, and any language in the Statement of Claim, which violated the confidentiality provisions of the Settlement Agreement and/or the Ancillary Agreement;
3. order Claimant to remove all language disparaging Moors & Cabot, Inc. from the Statement of Claim, or in the alternative, order Claimant to pay monetary damages to Moors & Cabot, Inc. in accordance with the provisions of the Non-Disparage Clause in the Ancillary Agreement; and
4. any and all other relief that the Arbitrator deems just and proper.

In its Statement of Answer and Answer to the Amended Statement of Claim, Respondent Morgan Stanley DW Inc. opposed Claimant's request for \$1.00 in damages.

At the hearing, Claimant withdrew his request for damages in the amount of \$1.00.

OTHER ISSUES CONSIDERED AND DECIDED

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

On or about October 2, 2017, Claimant notified FINRA Dispute Resolution that the customers related to occurrence numbers [REDACTED] and [REDACTED] are deceased.

The Arbitrator conducted a recorded telephonic hearing on March 22, 2018 so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondents participated in the expungement hearing and did not contest the request for expungement.

The Arbitrator reviewed the BrokerCheck® Report for [REDACTED] and the settlement documents, considered the amount of payments made to any party, and considered other relevant terms and conditions of the settlements. The Arbitrator noted that the settlements were not conditioned on the customers not opposing the request for expungement. The Arbitrator also noted that [REDACTED] did not contribute to the settlement amount related to occurrence [REDACTED].

The Arbitrator noted that Claimant's BrokerCheck® Report reflected an individual contribution to the settlement related to occurrence number [REDACTED]. The Arbitrator believes that expungement of occurrence number [REDACTED] is still appropriate.

After reviewing the evidence and hearing testimony, the Arbitrator specifically made a finding of fact that the Claimant had not contributed to the settlement in that occurrence number [REDACTED]. The Arbitrator based this on the sworn testimony of the Claimant, who testified that he made no contribution to the settlement and the lack of any documents from Morgan Stanley that supported any contribution.

In recommending expungement the Arbitrator relied upon the following documentary or other evidence: Claimant's Statement of Claim and Amended Statement of Claim, Respondent Moors & Cabot, Inc. Statement of Answer, Respondent Morgan Stanley DW Inc.'s Statement of Answer and Answer to Amended Statement of Claim, Claimant's BrokerCheck® Report, the settlement agreements, and the testimony and evidence presented at the expungement hearing.

The Arbitrator noted that [REDACTED] did not previously file a claim requesting expungement of the same disclosures in the CRD.

The parties present at the hearing have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, the testimony and evidence presented at the 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 expungement of occurrence # [REDACTED] is denied.
2. The Arbitrator recommends the expungement of all references occurrence number [REDACTED] from registration records maintained by the Central Registration Depository ("CRD"), for [REDACTED] (CRD# [REDACTED]), with the understanding that, pursuant to Notice to Members 04-16, [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, 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:

The customers related to occurrence number [REDACTED] taking monthly systematic withdrawals of \$2,000 per month in income from an annuity holding. Those annuity withdrawals were deposited into the customers' account at Morgan Stanley. While the payment showed in the customers' account as a cash deposit, the value of the annuity in the account declined by the \$2,000 withdrawal every month. The \$2,000 from the annuity was then paid out to the customers as part of a \$3,000 per month income payment, which they took from their account.

After leaving Morgan Stanley, the Claimant spoke with the customers, who informed the Claimant that their son-in-law was now in charge of their affairs. The customers' son-in-law believed that the customers' account value was less than it should be and he did not understand that the account's lower value was due to the customers' monthly income withdrawals. The customers provided in support of their claim an account summary, wherein their losses were overstated by at least \$50,000. The \$2,000 that the customers had been taking from their annuity as part of their monthly \$3,000 income from their account was accounted for, incorrectly, twice in said account summary. First, it was accounted for as negative for the decline in the annuity, and second, it was counted as incorrectly increasing the customers' invested amount in their account by \$2,000 per month (when it was received into the account from the annuity company). The \$2,000 withdrawal per month, between June of 2001 and January of 2004, is reflected in the account summary as a "cash deposit."

The allegations of unsuitability and mismanagement are factually impossible, because the customers' monthly income withdrawals were the largest contributor to the decrease in their account's value. Furthermore, the customers' account outperformed the market during its decline. Additionally, the allegations of unsuitability and mismanagement are clearly erroneous, because the customers never expressed any concerns about mismanagement to the Claimant over their six-year trading relationship. The complaint was only initiated due to the customers' son-in-law's failure to appropriately evaluate the account in consideration of the customers' monthly withdrawals.

3. Respondent Moors & Cabot, Inc. relief requests are denied in their entirety.
4. Any and all claims for relief not specifically addressed herein are denied.

FEES

Pursuant to the Code of Arbitration Procedure, 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 at the time of the event(s) giving rise to the dispute. Accordingly, as parties, Moors & Cabot, Inc. and Morgan Stanley DW Inc. 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 arbitrators, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) pre-hearing sessions with a single arbitrator @ \$50.00/session	= \$ 100.00
Pre-hearing conferences: December 14, 2017	1 session
March 13, 2018	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing Date: March 22, 2018	1 session

Total Hearing Session Fees	= \$ 150.00
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The Arbitrator has assessed \$150.00 of the hearing session fees to Claimant.

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

ARBITRATOR

Mary E. Bassett

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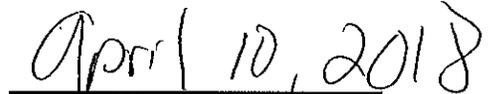
Sole Public Arbitrator

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



Mary E. Bassett
Sole Public Arbitrator



Signature Date

April 11, 2018

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