

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

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In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

Morgan Stanley & Co., LLC

Hearing Site: Birmingham, Alabama

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

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

For Respondent Morgan Stanley & Co., LLC ("Respondent"): Kimberly J. Gustafson, Esq., Morgan Stanley Legal and Compliance, St. Petersburg, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: October 11, 2017.  
Claimant signed the Submission Agreement: October 11, 2017.

Statement of Answer filed by Respondent on or about: November 30, 2017.  
Respondent signed the Submission Agreement: November 6, 2017.

**CASE SUMMARY**

Claimant asserted a claim seeking expungement of a customer complaint, occurrence number ██████████ ("Underlying Complaint"), from his Central Registration Depository ("CRD") record.

In the Statement of Answer, Respondent advised that it took no position regarding Claimant's request for expungement and that in the event Claimant is able to meet his burden under FINRA Rule 2080, Respondent has no opposition to the expungement of Underlying Complaint.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Complaint from his CRD record pursuant to

FINRA Rule 2080(b)(1)(A), as the claim, allegation, or information is factually or clearly erroneous;

2. Expungement of the Underlying Complaint from his CRD record pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false;
3. 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, Respondent requested that any and all forum fees for this matter, which solely concerns expungement, be assessed against Claimant.

### **OTHER ISSUES CONSIDERED AND DECIDED**

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

On February 9, 2018, Claimant provided notice that the Statement of Claim, a copy of the Initial Pre-Hearing Conference Order dated February 5, 2018, and notice of the expungement hearing was served on the customer in the Underlying Complaint ("Customer").

On February 14, 2018, Claimant filed an Affidavit of Service signed by Claimant's counsel advising that the Customer was served with the Statement of Claim and the Initial Pre-Hearing Conference Order.

On May 4, 2018, Claimant submitted an email from the Customer advising that he received notice of the expungement hearing and that he supports the expungement of this matter ("Customer's Email").

The Arbitrator conducted a recorded telephonic hearing on May 7, 2018 so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing and did not contest the request for expungement. The Customer did not participate in the expungement hearing and did not contest the request for expungement as stated in the Customer's Email.

At the evidentiary hearing, Claimant withdrew his request for \$1.00 in compensatory damages.

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: General Release and Settlement Agreement between the Customer and Respondent dated March 12, 2009; Letter from Respondent to the Customer dated March 4, 2009; the Customer's Email; and Claimant's testimony.

The parties present at the hearing have agreed 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. The Arbitrator recommends the expungement of all references to the Underlying Complaint, occurrence number [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 false.

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

The allegation, as it pertains to Claimant, is false, because Claimant immediately conveyed the Customer's instructions to the investment trade team. Claimant followed his standard course of business and instructed his team to surrender the annuity on October 2, 2008. The investment trade team did not surrender the annuity that day as Claimant had instructed.

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 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 is assessed the following:

Member Surcharge	= \$ 150.00
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**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: February 5, 2018	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$50.00
Hearing Date: May 7, 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**

Lita S Menkin

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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**

*Lita S Menkin*

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Lita S Menkin  
Sole Public Arbitrator

May 10, 2018

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Signature Date

May 10, 2018

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