

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

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In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondents

Morgan Stanley DW Inc.  
First Asset Management, Inc.

Hearing Site: New York, New York

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Nature of the Dispute: Associated Person vs. Members

**REPRESENTATION OF PARTIES**

For Claimant ██████████: Harris Freedman, Esq., AdvisorLaw LLC,  
Broomfield, Colorado.

For Respondent Morgan Stanley DW Inc.: Chan H. Nam, Esq., Morgan Stanley Wealth  
Management, New York, New York.

Respondent First Asset Management, Inc. did not enter an appearance in this matter.

**CASE INFORMATION**

Statement of Claim filed on or about: December 28, 2017.

Claimant signed the Submission Agreement: December 28, 2017.

Statement of Answer filed by Respondent Morgan Stanley DW Inc. on or about:  
February 16, 2018.

Morgan Stanley DW Inc. signed the Submission Agreement: June 27, 2018.

Respondent First Asset Management, Inc. did not submit a Statement of Answer or sign  
the Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following cause of action: expungement.

In the Statement of Answer, Respondent Morgan Stanley DW Inc. did not oppose  
Claimant's expungement request.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of customer complaints from his CRD records, compensatory damages in the amount of \$1.00, and any and all other relief as deemed just and equitable.

In the Statement of Answer, Respondent Morgan Stanley DW Inc. requested that the request for compensatory damages be denied.

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

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

Respondent First Asset Management, Inc. did not file with FINRA Office of Dispute Resolution a Statement of Answer or properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and, is bound by the determination of the Arbitrator on all issues submitted.

The Arbitrator conducted a recorded telephonic hearing on July 11, 2018 so that the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent Morgan Stanley DW Inc. participated in the expungement hearing and did not contest the request for expungement.

Respondent First Asset Management Inc. did not participate in the expungement hearing and did not contest the request for expungement.

On May 17, 2018, Claimant notified the customer in the underlying complaint for Occurrence Number [REDACTED] of his request for expungement and of the right to participate in the expungement hearing and also provided the customer with a copy of the Statement of Claim.

The customer did not participate in the expungement hearing and did not contest the request for expungement.

The Arbitrator finds that the customer does not desire to participate in the expungement hearing and that a decision on the merits of Claimant's request can be entered.

Claimant informed FINRA Office of Dispute Resolution that the customer in the underlying complaint for Occurrence Number [REDACTED] died on September 4, 2005 and therefore could not be notified of Claimant's expungement request.

The Arbitrator reviewed Claimant's BrokerCheck® Report.

The Arbitrator did not review the settlement documents since they could not be located due to the age of the complaints. Based on Claimant's testimony, the Arbitrator finds that the settlements were not conditioned on Claimant not opposing the request for expungement and that Claimant did not contribute to the settlement amounts.

The Arbitrator noted that Claimant did not previously file claims requesting expungement of the same disclosures in the CRD.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the pleadings, Claimant's testimony and exhibits.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the expungement 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 all references to Occurrence Number [REDACTED] from registration records maintained by the Central Registration Depository ("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, 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:

Against the recommendation of the Claimant, the customer chose to sell his holdings of Conquest Airlines Stock, due to a negative news report that caused the value of the stock to fall. The customer directed the Claimant to enter a limit sell before the opening of the market, which Claimant did. The previous day's closing price was higher than the customer's stipulated limit for his sell order. However, the stock unexpectedly opened at a lower price than the customer's limit and due to this sell order imbalance, the order was not able to be executed. The customer became incensed at learning that his sell order was not executed, despite having the reason explained to him by both Claimant and Claimant's branch manager. The customer filed a complaint alleging that he "could have received a better stock price in the execution of his trade." Given the parameters established by the customer for this trade, that would not have been possible and Claimant cannot be held responsible for the market anomalies that prevented this trade from happening as the customer wished.

2. The Arbitrator recommends the expungement of all references to Occurrence Number [REDACTED] from registration records maintained by the Central Registration Depository ("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, 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:

The customer, who expressed an investment objective of high income and a moderate risk tolerance, invested 2% of his portfolio in high yield Boston Chicken Bonds in 1998, upon the recommendation of Claimant. The bonds performed as expected for the first 3 years and then lost value around 2000 due to deteriorating conditions at the company. The customer expressed concern about this to Claimant, with whom he had periodic in person meetings to review his portfolio.

Claimant told the customer that the loss of market value of the bonds was offset by the income earned to date by such bonds as well as the then residual value of the bonds. The customer did not speak to the Claimant about filing a complaint.

Claimant left his then employer, Morgan Stanley DW Inc., in December of 2000 and the customer filed a complaint a year later, on December 12, 2001, in which Claimant was named, with the customer alleging Claimant had "misrepresented and withheld facts" in connection with customer's purchase of the Boston Chicken Bonds. It is not known when or whether the customer sold these bonds or did anything to mitigate what he considered to be his loss. Given the frequent in person meetings with this customer and the customer's 30 – 40 years prior experience as an investor, it is questionable that he would not have understood what was explained to him about this investment with which he was happy for the first 3 years he held it. It is also not reasonable to hold the Claimant responsible for the customer's investment performance when the customer was no longer his client.

3. Any and all claims for relief not specifically addressed herein, including compensatory damages, 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
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*\*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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as parties, Respondents Morgan Stanley DW Inc. and First Asset Management, Inc. are each 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, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session @ \$50.00/session	=\$ 50.00
Pre-hearing conference: May 1, 2018	1 session

One (1) hearing session on expungement request @ \$50.00/session	=\$ 50.00
Hearing Date: July 11, 2018	1 session

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Total Hearing Session Fees	=\$100.00
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The Arbitrator has assessed the hearing session fees of \$100.00 to Claimant.

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

**ARBITRATOR**

Karen Isabel Bedrosian -  
Richardson

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Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

**Arbitrator's Signature**

/s/:Karen I. Bedrosian-Richardson

July 25, 2018

\_\_\_\_\_  
Karen Isabel Bedrosian - Richardson  
Sole Public Arbitrator

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

**July 26, 2018**

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