

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

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In the Matter of the Arbitration Between:

Claimant

Case Number: [REDACTED]

vs.

Respondent  
Morgan Stanley

Hearing Site: Detroit, Michigan

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant [REDACTED] ("Claimant"): Michael Bessette, Esq., HLBS Law, Westminster, Colorado and Dochter Kennedy, Esq., AdvisorLaw, LLC, Broomfield, Colorado.

For Respondent Morgan Stanley ("Respondent"): Abigail Elrod, Esq., Morgan Stanley Wealth Management, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: January 30, 2018.  
Claimant signed the Submission Agreement: January 30, 2018.

Statement of Answer filed on or about: May 24, 2018.  
Morgan Stanley signed the Submission Agreement: June 14, 2018.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted a claim seeking expungement of a customer complaint ("Underlying Complaint") from his registration records maintained by the Central Registration Depository ("CRD") (occurrence number [REDACTED]).

In the Statement of Answer, Respondent took no position concerning the Underlying Complaint or the request for expungement and denied any wrongdoing.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of the Underlying Complaint from his records maintained by the CRD, \$1.00 in compensatory damages, and any and all other relief that the Arbitrator deems just and equitable

In the Statement of Answer, Respondent objected to any award of damages.

At the close of the hearing, Claimant withdrew his request for damages.

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

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

On or about July 25, 2018, Claimant filed a notice of service, reflecting that Claimant provided a copy of the Statement of Claim and notice of the expungement hearing to the customer in the Underlying Claim (the "Customer").

On or about July 26, 2018, Claimant filed an Affidavit of Service, in which Claimant's counsel, Dochter Kennedy, swore that true copies of the Statement of Claim had been served on the Customer by means of Certified U.S. mail.

The Arbitrator conducted a recorded telephonic hearing on September 5, 2018, so the parties could present oral argument and evidence on Claimant's request for expungement.

The Customer did not participate in the expungement hearing.

Respondent participated in the expungement hearing.

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: Claimant's testimony and the settlement history between the Customer and Respondent.

### **AWARD**

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

The Arbitrator recommends the expungement of all references to 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 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 false.

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

The Customer alleged unsuitability. The Customer was a sophisticated investor with a history of similar investments over several years. Claimant and the Customer communicated weekly regarding the Customer's investments. The Customer complained of unmet objectives, goals, risk tolerance, income, and liquidity needs. Mere decline in value does not render an investment unsuitable, and the Customer did not complain about similar investments that fluctuated. Additionally, the Customer had other liquid assets to meet cash flow needs.

Additionally, the amount of settlement, while significant, was nominal in comparison to the Customer's liquid and net worth. The Customer remained invested with Respondent notwithstanding her complaint.

### **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 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, 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 with a single arbitrator @ \$50.00/session	= \$ 50.00
Pre-hearing conference: June 26, 2018 1 session	
One (1) hearing session on expungement request @ \$50.00/session	= \$ 50.00
<u>Hearing Date: September 5, 2018 1 session</u>	
<hr/> Total Hearing Session Fees	<hr/> = \$ 100.00

The Arbitrator has assessed \$75.00 of the hearing session fees to Claimant.

The Arbitrator has assessed \$25.00 of the hearing session fees to Respondent.

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

**ARBITRATOR**

Tracy L. Allen

- 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**



Tracy L. Allen  
Sole Public Arbitrator



Signature Date

September 10, 2018

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