

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant
[REDACTED]

Case Number: [REDACTED]

vs.

Respondent
Morgan Stanley DW Inc.

Hearing Site: Phoenix, Arizona

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant [REDACTED] (“Claimant”); Erica Harris, Esq., AdvisorLaw, LLC, Broomfield, Colorado.

For Respondent Morgan Stanley DW Inc. (“Respondent”): Jeffrey S. Jacobi, Esq., Legal and Compliance Division, Morgan Stanley Smith Barney LLC, San Francisco, California.

CASE INFORMATION

Statement of Claim (“SOC”) filed on or about: February 21, 2018.
Claimant signed the Submission Agreement: February 21, 2018.

Statement of Answer filed by Respondent on or about: May 11, 2018.
Respondent signed the Submission Agreement: May 11, 2018.

CASE SUMMARY

Claimant asserted a claim seeking expungement of a customer complaint, occurrence number [REDACTED] (“Underlying Claim”), from his Central Registration Depository (“CRD”) record.

In the Statement of Answer, Respondent objected to Claimant’s SOC to the extent it alleges that Respondent engaged in any wrongdoing, and advised that it does not oppose Claimant’s request for expungement.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Claim from his CRD record pursuant to FINRA Rules 2080(b)(1)(A) as the claim, allegation, or information is factually impossible

- or clearly erroneous;
2. Expungement of the Underlying Claim 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 the Arbitrator deny Claimant's request for damages.

OTHER ISSUES CONSIDERED AND DECIDED

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

In Claimant's SOC, he requested to have a telephonic expungement hearing. Respondent did not respond to this request.

On June 11, 2018, the Arbitrator held the Initial Pre-hearing Conference ("IPHC") with the parties. By Order dated that same day, the Arbitrator stated, among other things, the following:

Claimant's request to hold a telephonic expungement hearing is denied. An in-person expungement hearing will be held.

Claimant's counsel stated that to the best of his knowledge no Panel or court has previously denied expungement of the Underlying Claim.

Claimant's counsel stated that on August 13, 2018 he will notify the customer company in the Underlying Claim ("S Corp.") of this expungement proceeding.

Respondent's counsel stated that the Underlying Claim did not settle and therefore there are no settlement documents for the Arbitrator to review.

On August 9, 2018, Claimant provided a Proof of Service on S Corp. of the SOC and notice of the expungement hearing. On August 14, Claimant provided a Proof of Service on S Corp. of an updated notice of the expungement hearing. On August 22, Claimant provided an Affidavit of Service signed by Claimant's counsel advising that S Corp. had been served with the SOC and notice of the expungement hearing.

The Arbitrator conducted a recorded in-person hearing on September 12, 2018 so the parties could present oral argument and evidence on Claimant's request for expungement. Respondent participated in the expungement hearing and, as stated in the Statement of Answer, did not oppose the request for expungement. S Corp. did not participate in the expungement hearing. Upon review of the file, the Arbitrator determined that S Corp. has been properly served with the Statement of Claim and received due notice of the hearing.

During the hearing, Claimant withdrew his request for compensatory damages in the amount of \$1.00 from Respondent.

The Arbitrator reviewed Claimant's BrokerCheck® Report.

In the IPHC Order, the Arbitrator noted that: 1) Respondent's counsel stated that the Underlying Case did not settle and therefore there are no settlement documents for the Arbitrator to review; and 2) Claimant's counsel stated that to the best of his knowledge no Panel or court has previously denied expungement of the Underlying Claim.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: SOC; Statement of Answer; Claimant's BrokerCheck® Report; Claimant's notes from the October 14, 1999 meeting wherein he, Mr. VC and others discussed the investment; letter dated December 9, 1999 from S Corp.'s lawyer to Respondent; and letters dated January 5 and May 12, 2000 from Respondent to S Corp.'s lawyer.

The Arbitrator has agreed that a handwritten, signed Award may be entered.

FINDINGS

Claimant is a registered securities representative and has been employed by Respondent¹ since 1998 (Claimant's Hearing Exhibit 2). Prior to October 14, 1999, Messrs. SC and RC, brothers, owned S Corp. A third brother, Mr. VC, worked for United Parcel Service ("UPS"). UPS scheduled an initial public offering ("IPO") to be held on or about November 10, 1999. S Corp. had a securities account at GKN Securities, Inc. ("GKN"), but Mr. VC referred Mr. SC to Claimant who opened an account with Respondent for S Corp. for the purpose of purchasing IPO shares of UPS. In apparent anticipation of the purchase, S Corp. sold stock at GKN against the advice of its broker at that firm.

The Claimant's notes dated October 14, 1999 (Claimant's Hearing Exhibit 7) show that on that date Mr. VC met with Claimant and others. The notes further state that Mr. VC told Claimant that he and others wanted to "put together about 100K to buy some UPS stock." Claimant said "I really won't know any details until we get a lot closer to the IPO date." At the hearing, Claimant testified that prior to the IPO he told S Corp. that he had no control over the number of UPS IPO shares that would be allocated to Respondent by the underwriter and that he would not know how many shares would be allocated to him for sale. Claimant also testified that he told S. Corp that he (Claimant) could not guarantee how many shares of UPS IPO would be available for purchase. On November 10, 1999, S Corp. purchased 250 shares of UPS IPO stock at \$50.00 per share.

A letter dated December 9, 1999 from S Corp.'s lawyer to Respondent (Claimant's Hearing Exhibit 4), states that Claimant allegedly told S Corp. that he (Claimant) could obtain as many shares of UPS IPO stock as S Corp. wanted to purchase as long as S Corp. maintained an account at Respondent with a minimum balance of \$100,000.00. This was denied by Claimant in his sworn testimony.

In a letter dated January 5, 2000 from Respondent to S Corp.'s lawyer (Claimant's Hearing Exhibit 5), Respondent stated that Claimant did not make any statement that could

¹ Respondent merged with Morgan Stanley & Co. Incorporated on April 1, 2007. On June 1, 2009, Morgan Stanley and Citigroup contributed the Global Wealth Management Group of Morgan Stanley & Co. Incorporated, now known as Morgan Stanley & Co. LLC, and the Smith Barney Division of Citigroup Global Markets, Inc., respectively, into Morgan Stanley Smith Barney Holdings, LLC. The joint venture owns Morgan Stanley Smith Barney LLC which is a registered investment advisor and broker-dealer.

reasonably be construed as an assurance or guarantee of a certain number of shares. The letter further stated that Claimant would not be certain of the details of the IPO until the shares were allocated. This position was reiterated in another letter from Respondent to S Corp.'s lawyer on May 12, 2000 (Claimant's Hearing Exhibit 6).

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 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 finding 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 finding based on the following reasons:

- a) The evidence presented at the expungement hearing did not demonstrate that Claimant represented that he could make available any number of UPS IPO shares for S Corp.'s purchase. Claimant and the letters from Respondent to S Corp.'s lawyer presented evidence that (1) the number of available UPS shares for sale in the IPO was not determined until the IPO; and (2) Claimant did not and could not guarantee the number of UPS IPO shares that would be available for purchase by a client.
 - b) Regarding S Corp.'s claimed financial losses, (1) Claimant and Respondent were not responsible for S Corp.'s decision to sell the stock at GKN as the decision was S Corp.'s alone; and (2) the UPS IPO shares increased in value after purchase.
 - c) Respondent did not oppose Claimant's request for expungement.
2. Any and all claims for relief not specifically addressed herein are denied.
 3. The Arbitrator has provided an explanation of his decision in this award. The explanation is for the information of the parties only and is not precedential in nature.

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
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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(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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Postponement Fees

Postponements granted during these proceedings for which fees were waived:

September 13, 2018, postponement by Respondent	= WAIVED
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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: June 11, 2018	1 session

One (1) hearing session on expungement request @ \$50.00/session	=\$ 50.00
Hearing Date: September 12, 2018	1 session

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

Merton E. Marks

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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



Merton E. Marks
Sole Public Arbitrator

Sep. 26, 2018
Signature Date

September 26, 2018
Date of Service (For FINRA Office of Dispute Resolution office use only)