

**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: San Francisco, California

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant ██████████ (“Claimant”): Dochter Kennedy, MBA, J.D. and Eric Litow, Esq., AdvisorLaw, LLC, Broomfield, Colorado.

For Respondent Morgan Stanley & Co., LLC (“Respondent”): Nicholas Y. Lin, Esq., Morgan Stanley, San Francisco, California.

**CASE INFORMATION**

Statement of Claim filed on or about: January 11, 2018.  
Claimant signed the Submission Agreement: January 11, 2018.

Statement of Non-Opposition filed by Respondent on or about: March 7, 2018  
Respondent signed the Submission Agreement: March 7, 2018.

**CASE SUMMARY**

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

In the Statement of Non-Opposition, Respondent advised that while it does not oppose Claimant’s request for expungement, it objects to Claimant’s request for compensatory damages.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

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

- FNIRA Rule 2080(b)(1)(A), as the claim, allegation, or information is factually impossible or clearly erroneous;
2. Expungement of the Underlying Complaint from her CRD record pursuant to FINRA Rule 2080(b)(1)(C) as the claim, allegation, or information is false;
  3. Damages in the amount of \$1.00 from Respondent; and
  4. Any and all other relief the Arbitrator deems just and equitable.

In the Statement of Non-Opposition, Respondent requested denial of Claimant's request for an award of damages.

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

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

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

On September 7, 2018, Claimant provided notice that the Statement of Claim and notice of the expungement hearing was served on the customers in the Underlying Complaint ("Customers").

On September 20, 2018, Claimant submitted an Affidavit of Service signed by Claimant's counsel advising that the Customers were served with the Statement of Claim.

The Arbitrator conducted a recorded telephonic hearing on September 27, 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 Non-Opposition, did not oppose the request for expungement. The Customers did not appear at the hearing. The Arbitrator found that the Customers had notice of the hearing.

The Arbitrator reviewed Claimant's BrokerCheck® Report.

The Arbitrator also reviewed 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 Customers 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; Statement of Claim; Statement of Answer; Exhibit 1 (Claimant's BrokerCheck® Report and CRD Individual Snapshot Report dated 01-11-2018); Exhibit 2 ("Explaining the Decline in the Auction Rate Securities Market" Federal Reserve Bank of Chicago Financial Markets Group Policy Discussion Paper Series by Adrian D'Silva, Haley Gregg, and David Marshall, dated 11-03-2008); Exhibit 3

("Auction Rate Security" Wikipedia article, not dated); Exhibit 4 (Customers' Limited Release dated 03-27-09), and Exhibit 5 (FINRA Regulatory Notice 09-12).

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 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 factually impossible or clearly erroneous.

The claim, allegation, or information is false.

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

Expungement is recommended pursuant to Rule 2080 because the claim, allegation, or information is clearly erroneous and the claim, allegation, or information is false.

The allegations as they relate to Claimant are false and clearly erroneous in that at the time the Customers purchased the auction rate securities, these securities were considered to have been liquid investments. This was the opinion of both the financial industry and Respondent. It was due to a market collapse for auction rate securities that led to the Underlying Complaint filed by the Customers. The collapse of the market for auction rate securities was completely outside of Claimant's control.

The Customers did not require liquidity from the auction rate securities until over a year after the auction rate securities were purchased. The Customers' liquidity needs arose due to an undisclosed credit card debt that was accumulated well after the initial investment. The Customers received interest on the auction rate

securities during the time period they held them, and the securities were repurchased at par value by Respondent pursuant to FINRA Regulatory Notice 09-12. Claimant was not asked to and did not contribute to the repurchase. The Customers continued to remain clients of Claimant for approximately 3 years after the auction rate securities were repurchased by Respondent.

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
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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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#### **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: May 8, 2018	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$50.00
Hearing Date: September 27, 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**

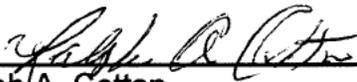
Ralph A. Cotton

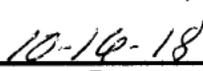
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Sole Public Arbitrator

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**

  
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Ralph A. Cotton  
Sole Public Arbitrator

  
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Signature Date

October 17, 2018  
Date of Service (For FINRA Office of Dispute Resolution office use only)