

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondents

E.F. Hutton & Company, Inc.
Morgan Stanley Smith Barney LLC
Prudential Equity Group, LLC

Hearing Site: San Diego, California

Nature of the Dispute: Associated Person vs. Member and Terminated Members

REPRESENTATION OF PARTIES

For Claimant ██████████ (“Claimant”): Dochter Kennedy, J.D., MBA, AdvisorLaw LLC, Broomfield, Colorado and Michael Besette, Esq., HLBS Law, Westminster, Colorado.

Respondent E.F. Hutton & Company, Inc. (“E.F. Hutton”) did not enter an appearance.

For Respondent Morgan Stanley Smith Barney, LLC (“Morgan Stanley”): Jeffrey S. Jacobi, Esq., Morgan Stanley Wealth Management, San Francisco, California.

For Respondent Prudential Equity Group, LLC (“Prudential”): Alan S. Brodherson, Esq., Law Offices of Alan S. Brodherson, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: June 21, 2017.

Amended Statement of Claim filed on or about: February 16, 2018.

Claimant signed the Submission Agreement: June 21, 2017.

Statement of Answer filed by Prudential on or about: August 15, 2017.

Prudential did not sign the Submission Agreement.

Statement of Answer filed by Morgan Stanley on or about: May 2, 2018.

Morgan Stanley signed the Submission Agreement: May 2, 2018.

E.F. Hutton & Company, Inc. did not file a Statement of Answer and did not sign the Submission Agreement.

CASE SUMMARY

Claimant asserted a claim seeking expungement of the three customer disputes (“Underlying Claims”) from his Central Registration Depository (“CRD”) records: a NASD Arbitration case, occurrence number [REDACTED]; an American Arbitration Association (“AAA”) Arbitration case, occurrence number [REDACTED]; and a customer complaint, occurrence number [REDACTED].

In its Statement of Answer, Prudential advised that it takes no position as to Claimant’s request for expungement.

In the Amended Statement of Claim, Claimant removed E.F. Hutton as a respondent and added Morgan Stanley as a respondent.

In its Statement of Answer, Morgan Stanley 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 Claims from his CRD records pursuant to FINRA Rule 2080(b)(1)(A), as the claim, allegation, or information is factually impossible or clearly erroneous;
2. Expungement of the Underlying Claims from his CRD records 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 Respondents; and
4. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Prudential requested:

1. Denial of Claimant’s request for \$1.00 in damages; and
2. Assessment of all forum fees for hearing sessions in this matter against Claimant.

In the Amended Statement of Claim, Claimant sought the same relief as in the Statement of Claim.

In the Statement of Answer, Morgan Stanley requested denial of Claimant’s claim for damages.

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

OTHER ISSUES CONSIDERED AND DECIDED

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

Prudential did not file with FINRA Office of Dispute Resolution a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of

Arbitration Procedure (“Code”) and having answered the claim is bound by the determination of the Arbitrator on all issues submitted.

On August 22, 2017, Claimant provided notice that the Statement of Claim was served on the following: the next of kin for the customer in occurrence number [REDACTED] (“Mr. M”); the customer in occurrence number [REDACTED] (“Mr. R”); and the customer in occurrence number [REDACTED] (“Mr. B”), collectively the “Customers”.

On August 24, 2017, Claimant filed an Affidavit of Service signed by Claimant’s counsel advising that the Customers were served with the Statement of Claim.

On or about September 19, 2008, E.F. Hutton filed for bankruptcy under the United States Bankruptcy Code. In accordance with these filings, by letter dated January 3, 2018, FINRA advised the parties and the Arbitrator that all claims against E.F. Hutton are indefinitely stayed.

Further, on January 31, 2018, Claimant submitted a Notice of Voluntary Dismissal Without Prejudice as to E.F. Hutton. On the same date, Claimant filed a Motion to Amend the Statement of Claim removing E.F. Hutton as a named respondent and adding Morgan Stanley as a named respondent (“Motion to Amend”). FINRA did not receive any responses to the Motion to Amend. By Order dated February 14, 2018, the Arbitrator granted the Motion to Amend.

Hereinafter, Prudential and Morgan Stanley are referred to as “Respondents.”

In its Statement of Answer, Morgan Stanley advised that E.F. Hutton had merged with Morgan Stanley.

On August 29, 2018, Claimant provided copies of follow up notices sent to the Customers regarding the expungement hearing date rescheduled for October 2, 2018.

On September 7, 2018, Claimant filed an Affidavit of Service signed by Claimant’s counsel advising that follow up notices had been sent to the Customers.

The Arbitrator conducted a recorded telephonic hearing on October 2, 2018 so the parties could present oral argument and evidence on Claimant’s request for expungement.

Respondents participated in the expungement hearing and did not contest the request for expungement. The Arbitrator found that the Customers had notice of the expungement hearing but did not appear or testify at the expungement hearing.

The Arbitrator reviewed the BrokerCheck® Report for Claimant.

The Arbitrator found that he could not review the settlement documents in the Underlying Claims because, due to the passage of time, the documents were unavailable.

Based on Claimant’s testimony, the Arbitrator noted that Claimant did not contribute to or participate in the settlements of the Underlying Claims and that the settlements were

made for economic reasons and to avoid the costs of litigation. The Arbitrator further noted that the settlements were not conditioned on the Customers not opposing the request for expungement.

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

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's oral testimony (undisputed by Respondents); Amended Statement of Claim; service letters to the Customers; and Claimant's BrokerCheck® Report.

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, 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 above-captioned arbitration 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, 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:

Occurrence Number [REDACTED] (in which Mr. M is the underlying customer)

The underlying arbitration case was based on unsuitability of options. The evidence introduced by Claimant was undisputed. The evidence was credible and showed the claim of "suitability" is erroneous, factually impossible and false and met both the FINRA Rules 2080(b)(1)(A) standard and the Rule 2080(b)(1)(C) standard for

expungement. The allegation is factually impossible because of the finding that Claimant did not recommend options to Mr. M, he recommended stocks.

Occurrence Number [REDACTED] (in which Mr. R is the underlying customer)

The Arbitrator relied on Claimant's sworn testimony, the fact that the Respondents presented no controverting evidence, and that Mr. R did not appear or testify on this matter. In addition, the Arbitrator determined that the evidence showed that the events were several years old and Mr. R was well-educated and an experienced investor.

The gravamen of Mr. R's case is that of unsuitability, unauthorized trading, that Mr. R was not advised of the risks, and that Claimant traded in speculative trading of naked put options causing Mr. R's loss. The Arbitrator found that this claim of unsuitability is false because, pursuant to FINRA Rule 2111, Claimant had a reasonable basis to believe that the strategy in question was suitable for Mr. R based on the diligence of all involved in ascertaining Mr. R's investment profile; which showed growth with a high risk tolerance. Respondent directed Claimant to employ the strategy. The allegations of unauthorized trading is factually impossible. There was no testimony or finding that there was such trading by Claimant. The allegation that Mr. R was not advised of the risks is factually impossible because the testimony supports Claimant's position that all risks were explained.

Occurrence Number [REDACTED] (in which Mr. B is the underlying customer)

Mr. B's complaint alleged unsuitable investment and misrepresentation. Respondents did not offer any evidence in opposition to the pleadings or exhibits relied on by the Arbitrator. The Arbitrator found Claimant's testimony to be credible and the investment was suitable and there were no misrepresentations. Mr. B's complaints are clearly erroneous, factually impossible and false; clearly meeting the standards set out in FINRA Rule 2080(b)(1)(A) and the Rule 2080(b)(1)(C).

Conclusion

Based on Claimant's testimony, the public disclosure of the patently false allegations does not offer any public protection and has no regulatory value. If not expunged, the Underlying Claims will mislead any person viewing Claimant's CRD records and will not provide valuable information for knowledgeable decision making.

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, Prudential is assessed the following:

Member Surcharge	= \$ 150.00
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Accordingly, as a party, Morgan Stanley is assessed the following:

Member Surcharge	= \$ 150.00
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Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

February 5, 2018, postponement by Claimant	= \$50.00
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Total Postponements Fees	= \$50.00
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The Arbitrator has assessed \$50.00 of the postponement fees to Claimant.

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: November 20, 2017 1 session	

One (1) hearing session on expungement request @ \$50.00/session	= \$50.00
Hearing Date: October 2, 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

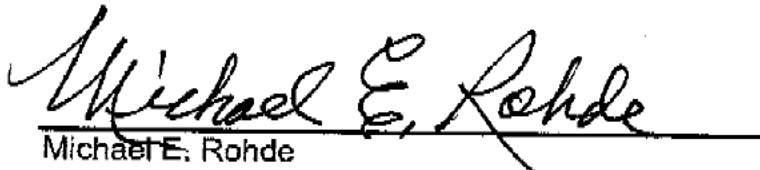
Michael E. Rohde

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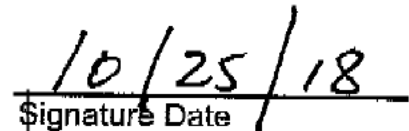
Sole Public Arbitrator

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



Michael E. Rohde
Sole Public Arbitrator



Signature Date

October 25, 2018
Date of Service (For FINRA Office of Dispute Resolution office use only)