

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

Case Number

vs.

Respondent

Morgan Stanley Smith Barney LLC

Hearing Site: Boston, Massachusetts

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant [REDACTED] Dochter Kennedy, Esq, AdvisorLaw, LLC,
Westminster, Colorado.

For Respondent Morgan Stanley Smith Barney LLC ("Morgan Stanley"): Joseph A.
Sack, Esq., Morgan Stanley, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: June 19, 2018.

[REDACTED] signed the Submission Agreement: June 19, 2018.

Statement of Answer filed by Respondent on or about: July 23, 2018.

Morgan Stanley signed the Submission Agreement: July 23, 2018.

CASE SUMMARY

Claimant asserted the following cause of action: expungement.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. expungement of occurrence numbers [REDACTED] and [REDACTED] from Claimant's CRD records pursuant to FINRA Rule 2080(b)(1)(A) as the claim, allegations, or information is factually impossible or clearly erroneous;
2. expungement of occurrence numbers [REDACTED] and [REDACTED] from Claimant's CRD records pursuant to FINRA Rule 2080(b)(1)(C) as the claim, allegations, or information is false;
3. an award of compensatory damages in the amount of \$1.00; and
4. any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent took no position regarding Claimant's requested expungement relief. However, Respondent denied that these matters were not required to be reported and denied that it is liable to Claimant for any damages.

At the close of the hearing, Claimant withdrew his request for compensatory damages in the amount of \$1.00.

OTHER ISSUES CONSIDERED AND DECIDED

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

Claimant provided FINRA Office of Dispute Resolution with proof that he notified the customers related to occurrence numbers [REDACTED] and [REDACTED] of the expungement request and of their right to participate and testify at the expungement hearing and included a copy of the Statement of Claim with the notice.

The Arbitrator conducted a recorded telephonic hearing on January 3, 2019 so the parties could present oral argument and evidence on [REDACTED] request for expungement.

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

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

The Arbitrator reviewed the BrokerCheck® Report for [REDACTED] 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 document for occurrence number [REDACTED] was not conditioned on Claimant not opposing the request for expungement. However, the settlement document for occurrence number [REDACTED] contained language prohibiting customer from opposing expungement. The Arbitrator also noted that [REDACTED] did not contribute to the settlement amount.

The Arbitrator reviewed the BrokerCheck® Report for Claimant and 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: The pleadings, Claimant's BrokerCheck® Report, testimony, settlement agreements and customer emails.

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. Claimant's request for expungement of occurrence number [REDACTED] from his CRD records is denied.
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 false.

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

The allegations were false and were focused upon the suitability of Global Partners LP which though originally was solicited, the customers, thereafter, acquired additional positions not consistent with their allegations. The customers had much contact with the Claimant and logged in frequently. Lastly, the customers complained of purchases that were consistent with their account profile and prior investments.

3. Any and all claims for relief not specifically addressed herein is 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

*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 event(s) giving rise to the dispute. Accordingly, as a party, Respondent Morgan Stanley Smith Barney LLC is assessed the following:

Member Surcharge = \$ 150.00

Discovery-Related Motion Fee

Fees apply for each decision rendered on a discovery-related motion.

One (1) decision on a discovery-related motion on the papers with one (1) arbitrator @ \$200.00/decision = \$200.00

Claimant submitted one discovery-related motion

Total Discovery-Related Motion Fees = \$ 200.00

The Arbitrator assessed the \$200.00 discovery-related motion 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, 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: October 2, 2018 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing Date: January 3, 2019 1 session

Total Hearing Session Fees = \$ 100.00

The Arbitrator assessed \$100.00 hearing session fees to the Claimant.

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

