

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

Morgan Stanley

Hearing Site: Seattle, Washington

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant ██████████ (“Claimant”): Dochter Kennedy, MBA, JD and Christopher Cummins, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Morgan Stanley (“Respondent”): Timothy L. Moore, Esq., Morgan Stanley Wealth Management, San Francisco, California.

CASE INFORMATION

Statement of Claim filed on or about: December 21, 2018.
Amended Statement of Claim filed on or about: February 4, 2019
Claimant signed the Submission Agreement: December 21, 2018.

Statement of Answer filed by Respondent on or about: March 15, 2019
Respondent signed the Submission Agreement: March 15, 2019.

CASE SUMMARY

Claimant asserted a claim seeking expungement of a FINRA arbitration case (“Underlying Arbitration”), occurrence number ██████████ from his Central Registration Depository (“CRD”) records.

In the Amended Statement of Claim, Claimant included additional factual allegations.

In the Statement of Answer, Respondent advised that it did not oppose Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Arbitration from his CRD records, pursuant to a finding that the claim, allegation, or information is factually impossible and clearly erroneous pursuant to FINRA Rule 2080(b)(1)(A);
2. Expungement of the Underlying Arbitration from his CRD records, pursuant to a finding that the claim, allegation, or information is false, pursuant to FINRA Rule 2080(b)(1)(C);
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 Amended Statement of Claim, Claimant set forth the same relief request as in the Statement of Claim.

In the Statement of Answer, Respondent requested Claimant's request for \$1.00 in compensatory damages be denied.

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

OTHER ISSUES CONSIDERED AND DECIDED

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

On June 18, 2019, Claimant provided notice that the Statement of Claim and notice of the expungement hearing had been served on the underlying customer in occurrence number 1712556 ("Customer").

On July 1, 2019, Claimant filed an Affidavit of Service, signed by Claimant's counsel, advising that the Customer had been served with a copy of the Statement of Claim.

The Arbitrator conducted a recorded telephonic hearing on July 23, 2019 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. The Customer did not participate in the expungement hearing. The Arbitrator found that the Customer 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 Customer not opposing the request for expungement. The Arbitrator noted that while the Customer's claim was for \$2,000,000.00, Respondent settled for \$199,000.00 and 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: Statement of Claim and Amended Statement of Claim with exhibits, Respondent's Answer, Claimant's service letter to the Customer, Claimant's affidavit of service to the Customer, Claimant's BrokerCheck® Report, Statement of Claim in the Underlying Arbitration, Statement of Answer in the Underlying Arbitration, and the General Release and Settlement Agreement between the Customer and Respondent dated March 6, 2017.

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 the Underlying Arbitration, occurrence number [REDACTED] from registration records maintained by 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:

The Customer held two accounts with Respondent: a discretionary account and a non-discretionary account. Regarding the former, by the terms of the account, the choice of investments was made by Claimant and thus it would be factually impossible for Claimant to fail to follow direction as alleged. Thus, meeting the test for subparagraph (A) of the rule for the non-discretionary account, as all trades were decided by the Customer.

Regarding the allegations that the Customer lost \$2,000,000.00 in May 2011, the actual loss was only \$251,000 or 10% of the portfolio which was within an acceptable level of risk for the aggressive strategy accepted by the Customer. Thus, the claim is false as it satisfies the test of subparagraph (c) of the rule.

Further, Claimant's testimony established that Claimant managed the accounts in accordance with the Customer's risk tolerance and that Claimant did not commit any misconduct.

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(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: May 6, 2019	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$50.00
Hearing Date: July 23, 2019	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

David William Hickman

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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



David William Hickman
Sole Public Arbitrator

2 Aug 19

Signature Date

August 2, 2019

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