

**Award**  
**FINRA Office of Dispute Resolution**

---

In the Matter of the Arbitration Between:

Claimant

Case Number

vs.

Respondents

Hearing Site: Atlanta, Georgia

Ameriprise Financial Services, Inc.  
Morgan Stanley

---

Nature of the Dispute: Associated Person vs. Members

**REPRESENTATION OF PARTIES**

For Claimant [REDACTED] Dochter Kennedy, Esq. and Owen Harnett, Esq.,  
AdvisorLaw LLC, Broomfield, Colorado.

For Respondent Ameriprise Financial Services, Inc. ("Ameriprise"): Howard M.  
Klausmeier, Esq., Vice President & Group Counsel – Litigation, General Counsel's  
Organization, Ameriprise Financial, Troy, Michigan.

For Respondent Morgan Stanley: Kimberly J. Gustafson, Esq., Vice President,  
Morgan Stanley Wealth Management – Legal and Compliance, St. Petersburg, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: November 28, 2016.

[REDACTED] signed the Submission Agreement: November 28, 2016.

Statement of Answer filed by Respondent Ameriprise on or about: January 18, 2017.  
Respondent Ameriprise signed the Submission Agreement: January 18, 2017.

Statement of Answer filed by Respondent Morgan Stanley on or about: January 11,  
2017.

Respondent Morgan Stanley signed the Submission Agreement: January 11, 2017.

**CASE SUMMARY**

Claimant asserted the cause of action of inaccurate reporting on his Central  
Registration Depository ("CRD") records. The cause of action relates to a complaint  
filed by a customer while Claimant was employed by Respondent Ameriprise regarding  
the customer's investment in a REIT ("Occurrence No. [REDACTED], as well as a  
complaint filed by a customer while Claimant was employed by Respondent Morgan  
Stanley regarding the customer's sale of his Prudential Direct Select Variable Annuity

and purchase in its place of a Transamerica Variable Annuity ("Occurrence No. [REDACTED]), both of which were recorded on Claimant's CRD records.

In its Statement of Answer, Respondent Ameriprise stated that if Claimant is able to bear his burden of proof regarding the criteria in FINRA Rule 2080, and if the Arbitrator determines that Occurrence No. [REDACTED] has no meaningful investor protection or regulatory value, then Respondent Ameriprise has no objection to Claimant's expungement request.

In its Statement of Answer, Respondent Morgan Stanley stated that the Statement of Claim raises no allegations of wrongdoing of any sort by Respondent Morgan Stanley, nor any request for a remedy from Respondent Morgan Stanley; therefore, Respondent Morgan Stanley stated it has no role to play in this matter other than to search for any relevant and responsive documents requested by Claimant.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of all references to Occurrence Nos. [REDACTED] and [REDACTED] from his CRD records, \$1.00 in compensatory damages, and such other and further relief deemed just and equitable.

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

In the Statement of Answer, Respondent Ameriprise requested: (1) expungement of all references to Occurrence No. [REDACTED] from Claimant's CRD records if Claimant is able to bear his burden of proof in accordance with FINRA Rule 2080 and Rule 13805 of the Code of Arbitration Procedure (the "Code"); (2) denial of Claimant's request for damages against Respondent Ameriprise; and (3) assessment of all costs, fees and member surcharges relating to this arbitration against Claimant.

At the conclusion of the hearing, Respondent Ameriprise reiterated its requests for relief contained in the Statement of Answer.

In the Statement of Answer, Respondent Morgan Stanley requested that any and all forum fees for this matter that solely relate to expungement be assessed against Claimant.

At the conclusion of the hearing, Respondent Morgan Stanley reiterated its request for relief contained in the Statement of Answer and further requested that any request for damages against Respondent Morgan Stanley be denied.

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

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

On or about July 6, 2017, Claimant filed with FINRA Office of Dispute Resolution proof of service of the Statement of Claim and notice of the expungement hearing upon the

underlying customer in Occurrence No. [REDACTED], and advised him of his right to participate in the expungement hearing scheduled for July 17, 2017.

On or about July 11, 2017, Claimant filed with FINRA Office of Dispute Resolution proof of service of the Statement of Claim and notice of the expungement hearing upon the underlying customer in Occurrence No. [REDACTED] and advised her of her right to participate in the expungement hearing scheduled for July 17, 2017.

The Arbitrator conducted a recorded telephonic hearing on July 17, 2017, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondents Ameriprise and Morgan Stanley did participate in the expungement hearing and did not contest the request for expungement.

The customer in Occurrence No. [REDACTED] did not participate in the recorded telephonic expungement hearing and did not contest the request for expungement.

The customer in Occurrence No. [REDACTED] did not participate in the recorded telephonic expungement hearing and did not contest the request for expungement.

The Arbitrator reviewed the BrokerCheck® Report for Claimant. The Arbitrator also reviewed the settlement agreement ("Settlement") regarding Occurrence No. [REDACTED] considered the amount of payment made to any party and considered other relevant terms and conditions of the Settlement. The Arbitrator noted that: (1) the Settlement was not conditioned on the customer not opposing the request for expungement; (2) Claimant did not contribute to the Settlement amount; (3) the Settlement did nothing to refute or rebut Claimant's testimony and evidence; (4) there was no settlement entered in connection with Occurrence No. [REDACTED] and thus no settlement agreement to review; and (5) Claimant did not previously file a claim requesting expungement of either of these Occurrence Nos. from his CRD records.

In recommending expungement the Arbitrator relied upon the following documentary or other evidence: the parties' respective pleadings, including Claimant's Statement of Claim with Exhibits 1-15 and Respondents' respective Answers thereto, and Claimant's extensive and candid verbal testimony during the expungement hearing.

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.

#### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), 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 Nos. [REDACTED] and [REDACTED] from registration records maintained by the CRD, for Claimant (CRD# [REDACTED]), with the understanding that, pursuant to Notice to

Members 04-16, Claimant 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 with respect to Occurrence Nos. [REDACTED] and [REDACTED]:

The claim, allegation, or information is false.

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

The allegations regarding both Occurrences are false because the allegations were not supported by the facts as they were revealed in both the pleadings and in the verbal testimony.

With respect to Occurrence No. [REDACTED], the facts support both that (i) the REIT was a suitable investment for the customer, and (ii) the REIT had not lost any money at the time the complaint was filed.

With respect to Occurrence No. [REDACTED], the customer's investment objectives were capital gains and principal protection with a moderate risk tolerance. Based upon that, Claimant placed the customer in suitable investments. Further, whenever the customer had investment questions, Claimant researched the answers thoroughly, and even held meetings/conference calls with the customer and the appropriate investment officials. After these meetings, the customer signed off that he understood the explanations and accepted them.

Thus, the credible evidence and facts presented proved that the allegations regarding both Occurrences were false.

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 parties, Respondents Ameriprise and Morgan Stanley are each assessed the following:

<b>Respondent Ameriprise</b>	
Member Surcharge	= \$ 150.00
<b>Respondent Morgan Stanley</b>	
Member Surcharge	= \$ 150.00

**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: March 28, 2017	1 session
One (1) hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing Date: July 17, 2017	1 session
<hr/>	
Total Hearing Session Fees	= \$100.00

The Arbitrator has assessed \$75.00 of the hearing session fees to Claimant, which includes the entire \$50.00 expungement hearing session fee.

The Arbitrator has assessed \$25.00 of the hearing session fees jointly and severally to Respondents Ameriprise and Morgan Stanley.

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

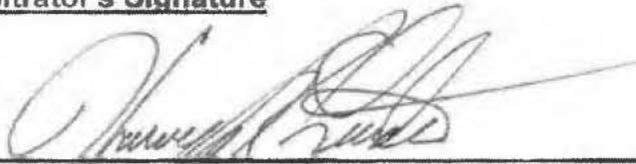
**ARBITRATOR**

Harvey R. Linder

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**

  
\_\_\_\_\_  
Harvey R. Linder  
Sole Public Arbitrator

7/20/17  
\_\_\_\_\_  
Signature Date

7/20/17  
\_\_\_\_\_  
Date of Service (For FINRA Office of Dispute Resolution office use only)