

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

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In the Matter of the Arbitration Between:

Claimant

██████████

Case Number: ██████████

vs.

Respondent

Morgan Stanley DW Inc.

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, Esq., and Eric Litow, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Morgan Stanley DW Inc. (“Respondent”): Lesley V. Tepper, Esq., Morgan Stanley Wealth Management, San Francisco, California.

**CASE INFORMATION**

Statement of Claim filed on or about: February 28, 2018.

Claimant signed the Submission Agreement: February 28, 2018.

Statement of Answer filed by Respondent on or about: May 30, 2018.

Respondent signed the Submission Agreement: May 30, 2018.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted a claim seeking expungement of customer complaints, Occurrence Numbers ██████████ and ██████████, from his registration records maintained by the Central Registration Depository (“CRD”).

In the Statement of Answer, Respondent noted that Claimant had not alleged any wrongdoing by Respondent in the Statement of Claim, and Respondent did not oppose Claimant’s request for expungement.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers ██████████ and ██████████ from his CRD, \$1.00 in compensatory damages, and any and all other relief as the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested that Claimant’s request for \$1.00 in damages be denied and that all forum fees be assessed to Claimant.

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

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

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

On or about October 19, 2018, Claimant filed a copy the Death Record for the customer related to Occurrence Number [REDACTED] and a copy of the letter sent to the customer for Occurrence Number [REDACTED], providing him with the Statement of Claim, notice of the expungement hearing date and time, and the option to participate in the expungement hearing. On or about October 29, 2018, Claimant filed an Affidavit of Service for the letter sent to the customer for Occurrence Number [REDACTED] and noted that service to the customer in Occurrence Number [REDACTED] was impossible.

The Arbitrator conducted a recorded, telephonic hearing on November 20, 2018 so the parties could present oral argument and evidence on Claimant's request for expungement. Respondent participated in the expungement hearing. The customer for Occurrence Number [REDACTED] did not participate in the expungement hearing. The Arbitrator took judicial notice that the customer for Occurrence Number [REDACTED] is deceased and could not participate in the hearing.

The Arbitrator reviewed the BrokerCheck® Report for Claimant and the settlement documents, considered the amount of payments made to any party, and considered other relevant terms and conditions of the settlements. The Arbitrator noted that the settlements were not conditioned on the customers not opposing the request for expungement. The Arbitrator also noted that Claimant did not contribute to the settlement amounts.

The Arbitrator found 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, and the exhibits submitted by the parties.

### **AWARD**

After considering the pleadings, the testimony, and the 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 Occurrence Number [REDACTED] and [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 (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 two occurrences at issue involved very similar facts. The underlying customers were co-workers who had received a recommendation from a fellow employee to invest in a specific equity, International Curator Resources Limited ("IC Stock"). IC Stock was a Mexican, copper mining venture and its stock was traded on the Toronto exchange. Claimant testified that the two customers had specifically gone to him because he was the broker for the employee who had recommended the stock to them and he had the ability to trade on the Toronto exchange, which at that time, many brokers did not. The IC Stock initially increased significantly in value, but, after about one to two years, it declined in value to the point that it became essentially worthless.

The two underlying customers both filed essentially identical complaints with the NASD (predecessor to FINRA) using the same attorney. The core issue of their complaints was that Claimant had "recommended" the IC Stock to them. Yet, in their complaints, both also stated that it was their fellow co-worker who had initially recommended the stock to them and that they had approached Claimant with the specific purpose of purchasing the IC Stock.

Both complaints were eventually settled by Claimant's employer at the time. There was no admission of wrongdoing and Claimant did not contribute to the settlements. Claimant, in his Statement of Claim, stated that the matters were settled purely to avoid litigation costs.

In regards to Occurrence Number [REDACTED] the customer approached Claimant to open an account with the express purpose of purchasing IC Stock, as well as other investments in 1996. The customer purchased a substantial amount of IC Stock. In 1997, the value of the IC Stock fell substantially, essentially wiping out its value. The customer filed a complaint with NASD in 1999. The customer states that he had not initially sought to file a complaint, but later did so at the urging of another broker who he had been consulting with.

In regards to Occurrence Number [REDACTED] the customer approached Claimant to open an account with the express purpose of purchasing IC Stock. The customer purchased IC Stock and made some other investments. In 1997, the value of the IC stock fell substantially, essentially wiping out its value. The customer filed a complaint with NASD in 2000.

Claimant gave extensive, credible and detailed testimony, which is backed up, at least in part, by the exhibits submitted, that he not only did NOT recommend the investments in IC Stock, but that he explained to both customers, in detail, that this was an extremely risky and speculative stock. Claimant also testified that he told the customers that because this was a risky Mexican mining company being traded on the Toronto exchange his employer at the time did NOT follow the stock and would not be able to give them any analysis of the stock. In addition, the trades are all noted as “unsolicited”.

Based upon all of the above, I find that there is strong and convincing evidence that Claimant did not recommend the investment to the customers, but that he simply executed a purchase that was requested and, in fact, warned the customers as to the risk involved. As such, the complaints are without merit and are untrue. Therefore, it is not to the public benefit that these complaints remain on Claimant’s CRD and I recommend that they be removed.

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 that employed the associated person at the time of the events 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: June 25, 2018	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing Date: November 20, 2018	1 session

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Total Hearing Session Fees = \$ 100.00

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**

Philip Aaron Tymon

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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**

  
Philip Aaron Tymon  
Sole Public Arbitrator

12/24/18  
Signature Date

December 26, 2018  
Date of Service (For FINRA Office of Dispute Resolution office use only)