

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

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In the Matter of the Arbitration Between:

Claimant

██████████

Case Number: ██████████

vs.

Respondent

Morgan Stanley

Hearing Site: Seattle, Washington

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant ██████████ (“Claimant”): Erica Harris, Esq. and Dochter Kennedy, MBA, J.D., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Morgan Stanley (“Respondent”): Nicholas Y. Lin, Esq., Morgan Stanley, San Francisco, California.

**CASE INFORMATION**

Statement of Claim filed on or about: December 26, 2018.  
Claimant signed the Submission Agreement: December 21, 2018.

Statement of Answer filed by Respondent on or about: February 19, 2019.  
Respondent signed the Submission Agreement: February 19, 2019.

**CASE SUMMARY**

Claimant asserted a claim seeking expungement of two customer complaints (“Underlying Complaints”), occurrence numbers ██████████ and ██████████ from her Central Registration Depository (“CRD”) records.

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

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

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

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

On May 15, 2019, Claimant submitted the United States Postal Service certified mail tracking numbers for letters Claimant sent to the customers in occurrence number [REDACTED] ("Ms. S") and the complainants in occurrence number [REDACTED] ("Mr. F and Ms. J"), which included copies of the Statement of Claim and notice of the expungement hearing. Hereinafter, Mr. F, Ms. J, and Ms. S are collectively referred to as the "Customers." On May 24, 2019, Claimant submitted a signed an affidavit advising that Claimant served copies of the Statement of Claim on the Customers.

On June 4, 2019, Ms. J submitted her opposition to Claimant's request for expungement.

The Arbitrator conducted a recorded telephonic hearing on June 17, 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 Customers did not participate in the expungement hearing. The Arbitrator found that the Customers had notice of the hearing. The Arbitrator found that Mr. F and Ms. S did not contest the expungement request, while Ms. J did.

The Arbitrator reviewed Claimant's BrokerCheck® Report.

The Arbitrator also reviewed the settlement documents for occurrence number [REDACTED] 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 Ms. S not opposing the request for expungement. The Arbitrator also noted that while the settlement amount was for the entire claim amount of \$19,229.59, Claimant did not contribute to the settlement amount and it was simply a refund of Ms. S' initial investment.

The Arbitrator noted that occurrence number [REDACTED] was not settled and was referenced as "Closed/Denied" on Claimant's BrokerCheck® Report. Accordingly, there were no settlement documents to review.

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: Statement of Claim, Claimant's testimony with exhibits, Claimant's response to Ms. J's letter, 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 the Underlying Complaints, occurrence numbers [REDACTED] and [REDACTED] from registration records maintained by CRD, for Claimant [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.

Occurrence number [REDACTED] (in which Ms. S is the underlying customer)

Pursuant to Rule 13805 of the Code of Arbitration Procedure ("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:

In the Arbitrator's opinion, Claimant meets the requirements of Rule 2080 and expungement should be recommended. It is evident that Claimant went the "extra mile" with her clients to explain the investments made on their behalf. After questioning Claimant about her conversations with Ms. S, the Arbitrator came to the conclusion that Claimant did her best to diversify her investments and keep them within Ms. S' risk tolerance. Claimant's testimony established that Ms. S forgot that she had ordered Claimant to sell an annuity that was due to expire. All of the normal disclosure documents for a second annuity were duly signed by Ms. S and the purchase was approved by Respondent's compliance department.

Ms. S filed her complaint based on the unsuitability of her second annuity. Claimant testified, however, that Ms. S was actually complaining about the tax ramifications of selling the original annuity, which were appropriately disclosed to Ms. S prior to the sale. The Arbitrator concluded that Claimant was not at fault because the investment was suitable as the annuity met all of Ms. S' investment needs. The Arbitrator found no evidence of unsuitability for the annuity.

Occurrence number [REDACTED] which Mr. F and Ms. J are the underlying complainants)

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 false.

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

It is evident that Claimant went the "extra mile" with her clients to explain the investments made on their behalf. In her complaint, Ms. J alleged unsuitable investments. However, the complaint was not lodged by the customer, Mrs. F, but by her daughter, Ms. J. According to Respondent, Ms. J had no standing to bring the complaint and the Arbitrator found that MR F considered the investments to be suitable in subsequent statements.

The Arbitrator found Mrs. F's investments to be suitable and in accordance with the standards of FINRA Rule 2111. Claimant was instructed to mirror Ms. J's portfolio for Mrs. F. Claimant considered Ms. J's portfolio to be suitable for Mrs. F based on the reasonable diligence of Claimant, Respondent, Ms. J's CPA, as well as Mr. F and Ms. J's ability to ascertain Mrs. F's investor profile. Mrs. F's investments were also suitable based on Claimant's testimony, Respondent's testimony and Claimant's pre-hearing brief which included Mr. F and Ms. J's statements regarding Mrs. F's investment goals and risk tolerance.

Expunging this incident from Claimant's CRD records is justified based on the consistency of Claimant's oral testimony given under oath and Claimant's pre-hearing brief that the investments were suitable.

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, Respondent is assessed the following:

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: April 22, 2019 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$50.00  
Hearing Date: June 17, 2019 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**

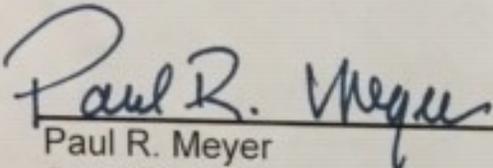
Paul R. Meyer

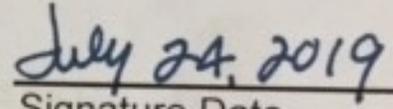
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Sole Public Arbitrator

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**

  
Paul R. Meyer  
Sole Public Arbitrator

  
Signature Date

July 24, 2019

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