

**AWARD**

FINRA Office of DISPUTE RESOLUTION

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CASE #: [REDACTED]

[REDACTED] (Claimant) vs. Morgan Stanley & Co., LLC and Morgan Stanley DW Inc. (Respondents)

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**REPRESENTATION OF PARTIES:**

For Claimant [REDACTED] Dochter Kennedy, MBA, J.D., AdvisorLaw LLC, Broomfield, Colorado.

For Respondents Morgan Stanley & Co., LLC, and Morgan Stanley DW Inc.: Leslie V. Tepper, Esq., Morgan Stanley Smith Barney, San Francisco, California.

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**NATURE OF DISPUTE:** Associated Person vs. Members

Statement of Claim filed on or about: March 21, 2017.

Amended Statement of Claim filed on or about: June 1, 2017.

Amended Statement of Claim filed on or about: June 5, 2017.

Statement of Answer filed by Respondents on or about: June 9, 2017.

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**CASE SUMMARY:** Claimant asserted a claim seeking expungement of three customer complaints: occurrence numbers [REDACTED]; [REDACTED]; and [REDACTED] ("Underlying Complaints") from his Central Registration Depository ("CRD") records.

In the Statement of Answer, Respondents advised that they do not oppose Claimant's request for expungement but that any request for damages against Respondent should be denied and any and all forum fees should be assessed against Claimant.

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**RELIEF REQUESTED:** In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Complaints from his CRD record pursuant to FINRA Rule 2080(b)(1)(A), as the claim, allegation, or information is factually impossible or clearly erroneous;
2. Expungement of the Underlying Complaints from his CRD record pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false;
3. Removal of Occurrence Number [REDACTED] by the Form U4 question 14I(3)(a), as the customer dispute is not reportable, because the damages do not exceed \$5,000, and it is older than 24 months;
4. An award of damages in the amount of \$1.00 from Respondents for their part in contributing to the Claimant's injury; and
5. Any and all other relief that the Arbitrator deems just and equitable.

In the Amended Statements of Claim filed on June 1, 2017 and June 5, 2017, Claimant made no additional relief requests but removed exhibits.

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

On August 9, 2017, Claimant provided notices that the customers in the Underlying Complaints had been served with the Statement of Claim and notice of the expungement hearing.

On August 14, 2017, Claimant provided an Affidavit of Service regarding the service of the Statement of Claim on the customers in the Underlying Complaints.

On or about August 24, 2017, Claimant filed a copy of a letter from the widow of Mr. L (the customer in occurrence number [REDACTED]) advising that Mr. L had passed away in June 2016.

The Panel conducted a recorded telephonic hearing on November 9, 2017 so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondents participated in the expungement hearing and did not contest the request for expungement. None of the customers in the Underlying Complaints participated in the expungement hearing.

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

The Arbitrator reviewed the BrokerCheck® Report for Claimant.

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; Respondent's Answer to Statement of Claim; Amended Statement of Claim; Previous orders; Claimant's service letters of August 9, 2017; Claimant Revised Submission of Expungement Hearing Exhibits; BrokerCheck® Report for Claimant; and the sworn testimony of Claimant.

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AWARD: The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The Arbitrator recommends the expungement of all references to Occurrence Numbers [REDACTED]; [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.

Occurrence Number [REDACTED] (in which "Mr. L" is the customer in the underlying complaint)

Pursuant to Rule 12805 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 Arbitrator has made the above Rule 2080 findings based on the following reasons: The evidence presented by Claimant was undisputed and shows that Mr. L died prior to the hearing; no one gave testimony for Mr. L; and Mr. L withdrew his underlying complaint on December 19, 2005. (Claimant's Exhibit 9, Customer L's withdrawal letter).

Respondents offered no evidence in opposition to the above evidence. The Arbitrator relied on the oral sworn testimony of Claimant at the hearing and Respondents offered no evidence contrary to this testimony. Further, Mr. L's allegations are clearly erroneous because in November 2005, Mr. L wanted his account liquidated for a transfer to Prudential Annuity Center. The evidence shows that Claimant made no misrepresentations and performed his duties as a representative in a thorough, ethical, and professional manner.

Occurrence Number [REDACTED] (in which "Mr. and Mrs. B" were the customers in the underlying complaints)

Pursuant to Rule 12805 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 Arbitrator has made the above Rule 2080 findings based on the following reasons: Respondents did not object or offer any evidence in opposition to the pleadings or the exhibits presented by Claimant and the Arbitrator's reliance on the exhibits. The evidence presented by the Claimants established that the transactions in question were suitable and all closing documents were signed by Mr. and Mrs. B.

The exhibits presented by Claimant at the hearing establish that Claimant made proper disclosures and did not make misrepresentations to Mr. and Mrs. B. Specifically, Claimant's Exhibit 4 (Respondents' March 25, 2009 letter to Mr. and Mrs. B denying the claim) for the reasons stated therein which are adopted as facts. The Arbitrator also finds that on October 7, 2008, Mrs. B instructed Claimant to liquidate everything contrary to Claimant's advice.

Occurrence Number [REDACTED] (in which "Ms. C" is the customer in the underlying complaint)

Pursuant to Rule 12805 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 and false.

The Arbitrator has made the above Rule 2080 findings based on the following reasons: The Arbitrator relied on the sworn testimony of Claimant at the hearing and Respondents did not object or offer any evidence to refute any claim at the hearing on this matter. No witness appeared for Ms. C.

The gravamen of Ms. C's underlying complaint is that Claimant advised her to purchase Claymore Delta Global Canadian Energy Trust 5, but that Claimant did not inform her that she would have to sell it on a particular date. The Arbitrator found that Ms. C was dissatisfied with the performance of the Trust.

By letter dated June 26, 2009, Respondents advised Ms. C that they were denying her claim and did not believe that any remedial action was warranted with regard to Ms. C's account and denied any request to be compensated.

The Arbitrator found that Claimant did inform Ms. C of the various stages and requirements of the investment. This, along with the Respondents denial of Ms. C' Underlying Complaint, supports a finding that the claim is factually impossible and clearly erroneous and false.

2. All other relief requests are denied.

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OTHER FEES: Respondents have paid to FINRA Office of Dispute Resolution the \$150.00 Member Surcharge previously invoiced.

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.

#### 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: July 31, 2017 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$50.00  
Hearing Date: November 9, 2017 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**

Michael E. Rohde

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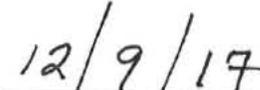
Sole Public Arbitrator

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



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Michael E. Rohde  
Sole Public Arbitrator



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Signature Date

December 11, 2017  
Date of Service (For FINRA-ODR office use only)