Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant [redacted]

Case Number: [redacted]

vs.

Respondents
Metropolitan Life Insurance Company
Morgan Stanley DW Inc.
MSI Financial Services, Inc.

Hearing Site: New York, New York

Nature of the Dispute: Associated Person vs. Members

REPRESENTATION OF PARTIES

For Claimant [redacted]: Michael Bessette, AdvisorLaw LLC, Broomfield, Colorado.

For Respondent Metropolitan Life Insurance Company: Joseph J. Prochaska, Metropolitan Life Insurance Company, Long Island City, New York.

For Respondent Morgan Stanley DW Inc., ("Morgan Stanley"): Jeremy S. Winer, Esq., Morgan Stanley, New York, New York.

For Respondent MSI Financial Services, Inc., ("MSI Financial"): Eunice Jordan, Esq., MetLife Legal Affairs, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: January 30, 2018.
Amended Statement of Claim filed on or about: March 13, 2018.
[redacted] signed the Submission Agreement: January 30, 2018.

Statement of Answer filed by Morgan Stanley DW Inc., on or about: March 22, 2018.
Morgan Stanley DW Inc. signed the Submission Agreement: March 22, 2018.

Statement of Answer filed by MSI Financial Services, Inc., on or about: May 4, 2018.
MSI Financial Services Inc. signed the Submission Agreement: May 4, 2018.

CASE SUMMARY

In the Statement of Claim and Amended Statement of Claim, Claimant asserted the following cause of action: expungement of Occurrence Numbers [redacted], [redacted] and [redacted] from his registration records maintained by the Central Registration Depository ("CRD").

In the Statement of Answer to Claimant's Amended Statement of Claim, Respondent Morgan Stanley indicated that it properly disclosed the complaint, and opposed the request for $1.00 in compensatory damages.

In the Statement of Answer, Respondent MSI Financial indicated that it filed the appropriate U4s as required by FINRA, and requested that the Panel deny Claimant's request for $1.00 in damages.

RELIEF REQUESTED

In the Statement of Claim and Amended Statement of Claim, Claimant requested expungement, $1.00 in compensatory damages, and any and all other relief as the Arbitrator deems just and equitable.

In the Statement of Answer to Claimant's Amended Statement of Claim, Respondent Morgan Stanley took no position on Claimant's request for expungement.

In the Statement of Answer, Respondent MSI Financial took no position on Claimant's request for expungement.

OTHER ISSUES CONSIDERED AND DECIDED

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

On or about March 13, 2018, the Claimant submitted an Amended Statement of Claim that removed Metropolitan Life Insurance Company and added MSI Financial Services, Inc. as a respondent. This amended claim did not affect the damages that were requested by the Claimant.

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

On or about December 4, 2018, Claimant provided FINRA Office of Dispute Resolution with proof that he notified the customers in the underlying complaints of the expungement request, the date of the expungement hearing, and of their right to participate and testify at the expungement hearing, and included a copy of the Statement of Claim with the notice. The customers did not participate in the expungement hearing and did not contest the request for expungement.

The Arbitrator conducted a recorded in-person hearing on January 4, 2019 so the parties could present oral argument and evidence on Claimant's request for expungement.

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

The Arbitrator found that the Claimant did not have and could not obtain the Settlement Agreement for Occurrence Number [redacted] that Morgan Stanley had conducted a search and was unable to locate the Settlement Agreement. The Arbitrator noted that the settlement was not conditioned on the customer not opposing the request for expungement. The Arbitrator also noted that [redacted] did not contribute to the settlement amount.

The Arbitrator reviewed the BrokerCheck® Report for [redacted]

The Arbitrator reviewed the settlement document for Occurrence Number [redacted] considered the amount of payments made to the customer, 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 also noted that [redacted] did not contribute to the settlement amount.

The Arbitrator found that there was no settlement related to Occurrence Number [redacted]

The Arbitrator noted that [redacted] 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: the credible testimony of Claimant, and Claimant's Exhibits 2, 12, 18 and 34.

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 all references to Occurrence Number [redacted] from registration records maintained by the Central Registration Depository ("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 finding of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

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

Based on the credible testimony of Claimant given at the expungement hearing on January 4, 2019, the investment in question was not unsuitable and was not unauthorized.

Claimant testified as follows. The customer who made this complaint (hereafter "Customer 1") became a client of Claimant as a result of her account being reassigned to Claimant after her previous advisor left Morgan Stanley. After the account was reassigned to Claimant, Claimant met with Customer 1 and her husband. At the time, Customer 1 was in her late 40's or early 50's. Her income was approximately $100,000.00 and her liquid net worth exceeded $1 million. She had been with Morgan Stanley as an investor for years. Claimant reviewed Customer 1's investment portfolio. Customer 1's objectives were long term growth and management of risk. She had liquidity needs to obtain cash. Her portfolio included about 20-25% fixed income. Claimant testified that he explained all the details of the Rydex Juno Fund, that it was designed to counter interest rate risk and was a hedge against rising interest rates. Claimant testified he discussed a variety of mutual funds with Customer 1 and that he recommended the Rydex Juno Fund because interest rates were expected to rise. Claimant testified that he reviewed with Customer 1 the fact sheet and prospectus for the Rydex Juno Fund and that he discussed with her the risks involved and that if interest rates did not rise, the product would not perform.

Claimant testified that Customer 1 decided to invest in the fund in May 2004 and invested between 5-10% of her portfolio, which was approximately $50,000.00 to $100,000.00 in one purchase to mitigate risk. Claimant testified that this investment did not change Customer 1's overall investment strategy. He testified that he obtained Customer 1's verbal authorization. Claimant testified that the fund was not aggressive in nature and that it did not subject the customer to significant swings in value. Claimant testified that subsequent to Customer 1's investment in the fund, interest rates did not rise as had been anticipated.

The complaint was filed by Customer 1 and her husband on November 23, 2004. She sought $8,000.00 in compensatory damages. Claimant testified that after filing the complaint and moving her account to another advisor, Customer 1 retained ownership of the fund. Claimant testified that Morgan Stanley settled with Customer 1 for $5,000.00 to insure client satisfaction and because settling was more cost effective. He testified that he was not asked to, and did not contribute to the settlement.

The Claimant did not have a copy of the Settlement Agreement. The record was left open for Claimant's counsel to attempt one more time to obtain the Settlement Agreement. Morgan Stanley's counsel confirmed in an email sent after the hearing that they could not locate the Settlement Agreement.

Based on the foregoing, the allegations that the investment in question was unsuitable and unauthorized are clearly erroneous. Accordingly, the complaint in question should be expunged from Claimant's CRD record pursuant to FINRA Rule 2080(b)(1)(A).

2. The Arbitrator recommends the expungement of all references to Occurrence Number [redacted] from registration records maintained by the Central Registration Depository ("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 finding of fact:

   The registered person was not involved in the alleged investment-related sales practice, violation, forgery, theft, misappropriation, or conversion of funds.

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

   The Claimant testified that he first met the customer as to whom this complaint was made (hereafter "Customer 2") in early 2007. She had been an existing client of another investment advisor ("hereafter the IA"). Claimant testified that he had been assigned to help the IA with his transition to MSI Financial. Claimant testified that at the time, Customer 2 was in her mid to late 80's with an annual income of $30,000.00 and a liquid net worth of $175,000.00. Claimant testified that Customer 2 was very sharp and had been a CD investor (not an investor in stocks and bonds) for more than 20 years.

   Claimant testified that a meeting when he first met Customer 2 in March, 2007, Customer 2, the IA and Claimant discussed rolling over Customer 2's two existing fixed annuities into a new fixed annuity at a better rate in order to provide Customer 2 with an income stream without requiring her to annuitize her contracts. Claimant testified that they also discussed at this meeting, that Customer 2 had some CDs that she was spending over time and she thought that she would spend them within five years and as a result they discussed moving these funds into a conservative mutual fund which would allow Customer 2 to receive income and allow her money to last longer.

Claimant testified that the IA subsequently met alone with Customer 2; that Claimant was not a party to that meeting and during this meeting the IA recommended that Customer 2 surrender her equity indexed annuity to convert it into an income generating investment. Claimant testified that at the time of this meeting, Customer 2 had not yet become Claimant's client. Claimant testified that Customer 2 discussed the IA's advice with her daughter who agreed and Customer 2 authorized the liquidation of her equity indexed annuity. That this occurred at the subsequent meeting at which Claimant was not present is confirmed by a written statement from the IA annexed as Exhibit 2 to the Amended Statement of Claim. Also, Exhibit 18, Request for Disbursement/Systematic Withdrawal Form for Non-Qualified Annuities whereby Customer 2 requested the full surrender value of the annuity, indicates that it was signed by Customer 2 on April 2, 2007 and was witnessed by the IA.

Claimant testified that the IA exited the financial industry for health reasons and following his departure from the industry, Customer 2 became a client of the Claimant. Claimant testified he met with Customer 2 a second time on April 30, 2007, at which time she was frustrated for being unable to reach the IA. Claimant testified that when he spoke with Customer 2 in April, 2007, she had already surrendered her equity indexed account and had $75,000.00 in liquid assets in her brokerage account at MSI Financial.

The Claimant testified that he recommended that she invest the proceeds of the surrender of her equity indexed annuity into the BlackRock Global Allocation Fund (the “BGA Fund"), which she subsequently approved after Claimant and Customer 2 had a conference call with Customer 2's daughter. Claimant testified the purchase of his BGA fund was the only transaction Customer 2 did with the Claimant. He testified she still owns that fund and is still a client of the Claimant today.

Subsequently, when Customer 2 received her tax bill for the surrender of her equity indexed annuity, Customer 2 and her son-in-law met with Claimant. After that meeting, Claimant testified he relayed Customer 2's concerns to his supervisor. On June 9, 2008, the complaint in question was filed. On July 9, 2009, MSI Financial settled with Customer 2 in the amount of $16,730.00. Claimant testified that he did not contribute to the settlement and that he had no knowledge of the Settlement Agreement before it was made.

Based on the foregoing, the Claimant was not involved in the alleged investment-related sales practice violation. The Arbitrator recommends expungement of this complaint from the Claimant's CRD record pursuant to FINRA Rule 2080(b)(1)(B).

3. The Arbitrator recommends the expungement of all references to Occurrence Number [redacted] from registration records maintained by the Central Registration Depository (“CRD”), for Claimant [redacted] (CRD# [redacted]), with the understanding that, pursuant to Notice to Members 04-16, Claimant [redacted]

[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 finding of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

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

The complaint by the customer in question (hereafter "Customer 3") is clearly erroneous and should be expunged from the CRD record of [redacted] based on the credible testimony of Claimant. Specifically, the allegation that "the representative did not explain Customer 3's funds would be invested in the stock market" is clearly erroneous.

Based on Claimant's credible testimony, Customer 3 had been referred to Claimant by another investment advisor who did financial planning. On May 27, 2008, Claimant began having several conversations with Customer 3, who at the time was in her mid to late 60's, retired, with an annual income of between $45,000.00 - $50,000.00 and a liquid net worth of about $175,000.00. Customer 3 had moderate experience as an investor with 20 years experience and an investment objective of growth. Customer 3 was seeking to better utilize her existing investments and was concerned that in the event her husband predeceased her, she would not have sufficient income because her husband's pension election would not have provided her with sufficient income to live on. Claimant testified that he had several meetings with Customer 3 and that they considered traditional mutual funds. Claimant testified that only an annuity with a guaranteed rate of income accumulation as well as a guaranteed joint lifetime income for Customer 3 and her husband would provide the income Customer 3 would need without a risk of failure.

Claimant testified that he recommended a MSI variable annuity with a Lifetime Withdrawal Guarantee ("the MSI Annuity"). Claimant testified that he explained all of the details of the MSI Annuity to Customer 3, including risks, terms and costs and that he provided Customer 3 with the MSI Annuity prospectus. Claimant testified that he advised Customer 3 that the MSI Annuity would not be appropriate if Customer 3 required liquid access to her principal and was told by Customer 3 that she did not intend to withdraw for at least ten years. Claimant said that he advised Customer 3 that her MSI Annuity would be invested in the Moderate Allocation portfolio which would invest Customer 3's funds in the stock market. Claimant testified that he explained to Customer 3 that Customer 3's investment could increase with the market, but that he made it clear to her that this portion of the MSI Annuity's value could drop if the market fell in value. Claimant testified that he reviewed the risks

involved with Customer 3. Claimant testified that no guarantees were made to Customer 3 other than what was said in the MSI Annuity's prospectus.

Exhibit 34, the Variable Annuity Application signed by Customer 3 on July 7, 2008 stated in part:

"ANNUITY PAYMENTS AND TERMINATON VALUES PROVIDED BY THIS CONTRACT ARE VARIABLE, MAY INCREASE OR DECREASE, WHEN BASED ON THE INVESTMENT EXPERIENCE OF THE SEPARATE ACCOUNT AND ARE NOT GUARANTEED AS TO FIXED DOLLAR AMOUNT."

In the months following Customer 3's investment in the MSI Annuity, Customer 3's account value declined with the decline in the markets. Claimant testified that Customer 3's income base was not impacted and the MSI Annuity had a guaranteed rate of accumulation.

Customer 3 filed the complaint on December 31, 2008. MSI Financial denied the claim on January 12, 2009. There was no settlement.

The complaint was clearly erroneous because Claimant and Customer 3 discussed that Customer 3s' funds would be tied to the market performance of the underlying investments and its value could rise or fall along with the markets and that Customer 3 was provided with product documents including the prospectus for the MSI Annuity. Accordingly, The Arbitrator recommends that the complaint in question should be expunged from Claimant's CRD pursuant to FINRA Rule 2080(b)(1)(A).

4. Any and all claims for relief not specifically addressed herein are denied.

FEES

Pursuant to the Code of Arbitration Procedure, 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 firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as parties, Respondents Metropolitan Life Insurance Company, Morgan Stanley DW Inc., and MSI Financial Services, Inc., are each 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 arbitrators, including a pre-hearing conference with the arbitrators 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 27, 2018	1 session	
Two (2) expungement hearing sessions @ $50.00/session			=$ 100.00
Hearing Date:	January 4, 2019	2 sessions	
Total Hearing Session Fees			=$ 150.00

The Arbitrator has assessed the $150.00 expungement hearing session fees to Claimant.

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

ARBITRATOR

Ted M. Rosen - Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Arbitrator's Signature

Ted M. Rosen
Sole Public Arbitrator

3/11/2019
Signature Date

March 12, 2019

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