

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

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In the Matter of the Arbitration Between:

Claimant

Case Number: [REDACTED]

vs.

Respondents

Hearing Site: Baltimore, Maryland

Legg Mason Wood Walker, Inc.,  
Citigroup Global Markets, Inc., and  
Morgan Stanley

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Nature of the Dispute: Associated Person vs. Members

**REPRESENTATION OF PARTIES**

For Claimant [REDACTED] ("Claimant"): Harris Freedman, Esq. and Dochter Kennedy, Esq., AdvisorLaw, LLC, Westminster, Colorado.

Respondent Legg Mason Wood Walker, Inc. ("Legg Mason") did not appear.

For Respondent Citigroup Global Markets, Inc. ("Citigroup"): David I. Hantman, Esq., Bressler, Amery & Ross, P.C., New York, New York.

For Respondent Morgan Stanley: Abigail D. Elrod, Esq., Morgan Stanley Wealth Management, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: September 17, 2018.

Amended Statement of Claim filed on or about: February 20, 2019.

Claimant signed the Submission Agreement: September 17, 2018.

Legg Mason did not file a Statement of Answer or sign the Submission Agreement.

Statement of Answer filed by Citigroup on or about: November 7, 2018.

Amended Statement of Answer filed by Citigroup on or about: April 8, 2019

Citigroup signed the Submission Agreement: October 11, 2018.

Statement of Answer filed by Morgan Stanley on or about: November 7, 2018.

Morgan Stanley signed the Submission Agreement: November 7, 2018.

### **CASE SUMMARY**

In the Statement of Claim and Amended Statement of Claim, Claimant asserted a claim seeking expungement of four customer complaints from his registration records maintained by the Central Registration Depository ("CRD").

In the Statement of Answer and Amended Statement of Answer, Citigroup denied any wrongdoing but did not oppose Claimant's request for expungement of the occurrences related to his prior employment with Citigroup.

In the Statement of Answer, Morgan Stanley denied any wrongdoing, but did not oppose Claimant's request for expungement of the occurrence related to his prior employment with Morgan Stanley.

### **RELIEF REQUESTED**

In the Statement of Claim and Amended Statement of Claim, Claimant requested expungement of Occurrence Numbers [REDACTED] [REDACTED] [REDACTED] and [REDACTED] from his CRD records, an award of compensatory damages in the amount of \$1.00 from the Respondents, and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer and Amended Statement of Answer, Citigroup objected to Claimant's request for \$1.00 in compensatory damages and further requested that all fees associated with this matter be assessed solely against Claimant.

In the Statement of Answer, Morgan Stanley objected to any award of damages against Morgan Stanley.

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

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

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

Legg Mason did not file with FINRA Office of Dispute Resolution a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code").

On November 13, 2018, FINRA Office of Dispute Resolution ("ODR") advised the parties that the Director of FINRA ODR determined that Claimant's request for expungement of Occurrence Number [REDACTED] is not eligible for arbitration, as it arises from a prior adverse award. Accordingly, pursuant to Rule 13203(a) of the Code, the forum was denied as to Occurrence Number [REDACTED]. The letter further advised that the case would proceed as to Occurrence Numbers [REDACTED] [REDACTED] and [REDACTED]. Furthermore, at the hearing, Claimant withdrew the request for expungement of Occurrence Number [REDACTED]. Accordingly, the Arbitrator notes that this award makes no ruling on Occurrence Number [REDACTED].

On or about January 30, 2019, Claimant filed copies of the letters sent to the customers related to Occurrence Numbers [REDACTED] [REDACTED] and [REDACTED] providing the customers with notice of the expungement hearing date and time and notice of the option to participate in the telephonic, expungement hearing on April 9, 2019, in addition to copies of the Statement of Claim. On or about February 1, 2019, Claimant also filed an Affidavit of Service for the letters sent to the customers.

On or about February 20, 2019, Claimant filed a motion to amend the Statement of Claim in order to correct a typographical error. In an order dated March 16, 2019, the Arbitrator granted Claimant's request to amend the Statement of Claim.

The Arbitrator conducted a recorded, telephonic hearing on April 9, 2019 so the parties could present oral argument and evidence on Claimant's requests for expungement. Citigroup and Morgan Stanley participated in the expungement hearing but did not contest the request for expungement. Legg Mason did not participate in the expungement hearing. None of the customers participated in the expungement hearing. At the hearing, Claimant requested to adjourn the portion of the hearing which involved Occurrence Numbers [REDACTED] and [REDACTED] in order to give Claimant additional time to conduct discovery on Citigroup, the Respondent related to those occurrences. Citigroup did not object to the request to adjourn. In an order dated April 9, 2019, the Arbitrator granted the request to adjourn and a second telephonic hearing was scheduled for May 21, 2019.

On or about April 19, 2019, Claimant filed a copy of the letter sent to the customer related to Occurrence Numbers [REDACTED] and [REDACTED] providing the customer with notice of the expungement hearing date and time and notice of the option to participate in the telephonic, expungement hearing on May 21, 2019. On or about April 25, 2019, Claimant also filed an Affidavit of Service for the letter sent to the customer.

The recorded, telephonic expungement hearing reconvened on May 21, 2019. Citigroup participated in the reconvened expungement hearing but did contest the request for expungement. Morgan Stanley and Legg Mason did not participate in the expungement hearing. None of the customers participated in the expungement hearing.

The Arbitrator reviewed the BrokerCheck® Report for Claimant. For occurrence number [REDACTED] the Arbitrator reviewed the settlement documents, 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 the customers not opposing the request for expungement. The Arbitrator also noted that Claimant did not contribute to the settlement amount.

The Arbitrator noted that the underlying complaints in Occurrence Numbers [REDACTED] and [REDACTED] did not result in settlement agreements.

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: the Amended Statement of Claim, the service history to Legg Mason, and the exhibits submitted by Claimant.

## AWARD

After considering the pleadings and 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 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.

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 factually impossible or clearly erroneous; and
- The claim, allegation, or information is false.

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

### Occurrence Number [REDACTED]

The customer complained that her investments from 2001 to 2011 were unsuitable. All of the stock purchased in the customer's portfolio were made with the guidance of another broker.

I find the claim made by the customer to be false and erroneous. I find the investments in question were suitable based on her customer profile. By way of background, the customer is a relative of Claimant. There is no record of the customer having filed a claim by submitting a demand to arbitrate and there is no testimony from the customer. Therefore, I am left with the testimony of Claimant and the actions of the Respondent.

Claimant testified that the account was non-discretionary and that all of the investments in the customer's portfolio were made by her while she was working with another broker. There were no changes to her account while Claimant acted as her broker. Further, Claimant testified that, while he made recommendations regarding specific stocks, the customer made absolutely no change to her portfolio. I find that Claimant's testimony is credible.

The customer filed a written complaint with Morgan Stanley. Morgan Stanley investigated the matter and denied the customer's complaint in a timely matter. Afterwards, the customer did not pursue the matter through arbitration or the courts and remained Claimant's client. Based on the foregoing I recommend that this complaint be removed from Claimant's BrokerCheck® Report.

**Occurrence Number** [REDACTED]

The customer complained that Claimant's recommendation of a certain investment was inappropriate given the customer's low tolerance for risk. The stock in question was American Home Mortgage and the amount purchased was approximately 5% of the customer's portfolio. This verbal complaint was followed up with a written complaint to the CEO of Citigroup dated August 31, 2007.

I find the claim made by the customer to be false and erroneous. The customer's account was a non-discretionary account and the stock in question was a highly rated stock at the time the customer purchased it. The stock suffered from the very significant changes in the housing market of 2007.

I find the customer was suitable for the investment. His customer profile indicated that his risk tolerance was moderate, not "low" as he asserted in his August 2007 complaint. In addition, the customer owned several investment properties. Insofar as mortgages are an integral aspect of real estate investing, it is not credible that the customer was not aware of the risks of investing in a mortgage company. Further, at the time of the investment, the company had a five star rating as a stock investment.

Claimant testified that the account was non-discretionary and that the customer approved all of the investments. Claimant further testified that he was in regular contact with the customer about the portfolio and that he discussed this investment with the customer. I find that Claimant's testimony is credible.

As noted above, the customer filed a verbal complaint with Citigroup with a subsequent letter dated August 31, 2007 to the CEO of Citigroup. Citigroup investigated the matter and denied the customer's complaint on September 26, 2007.

**Occurrence Number** [REDACTED]

The customer filed a demand for arbitration, [REDACTED] with FINRA. The FINRA complaint made reference to the stock at issue in Occurrence Number [REDACTED] issued by American Home Mortgage and Countrywide Mortgage.

I have already found that the customer's claim against Claimant was false and erroneous as it pertains to the American Home Mortgage stock (Occurrence Number [REDACTED]). I find this second claim to be false and erroneous as well. The customer's account was a non-discretionary account and the stock in question, Countrywide Mortgage, was a highly rated stock when the customer purchased Countrywide Capital Series V Strips in November of 2006. The stock suffered from the very significant changes in the housing market of 2007. The shares owned by the customer were preferred shares and, given the subsequent

bankruptcy of the company, the customer was further protected by the preferred status of his shares.

I find the customer was suitable for this investment. His customer profile indicated that his risk tolerance was moderate. In addition, the customer owned several investment properties. Insofar as mortgages are an integral aspect of real estate investing, it is not credible that the customer was not aware of the risks of investing in a mortgage company.

Claimant testified that the account was non-discretionary and that the customer approved all of the investments. Claimant further testified that he was in regular contact with the customer about the portfolio and that he discussed this investment with the customer. I find that Claimant's testimony is credible. Furthermore, the customer was afforded an opportunity to appear at this proceeding and submit a statement of position. The customer chose not to do so.

I reviewed the settlement agreement connected with the FINRA Arbitration. Citigroup paid the customer \$14,000. Claimant testified that he did not participate in the settlement either as a decision-maker or as a payer. Further, he testified that Citigroup indicated it was a business decision to settle the matter with no admission of wrongdoing on the part of either Claimant or Citigroup. Citigroup does not challenge this assertion and does not object to Claimant's expungement request. Based on the foregoing, I find the customer's complaint to be false and erroneous.

2. 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
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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 firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as parties, Citigroup, Legg Mason, and Morgan Stanley are each assessed the following:

Member Surcharge	= \$ 150.00
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#### Discovery-Related Motion Fee

Fees apply for each decision rendered on a discovery-related motion.

One (1) decision on a discovery-related motion on the papers

@ \$200.00/decision = \$ 200.00

Claimant submitted one (1) discovery-related motion

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Total Discovery-Related Motion Fees = \$ 200.00

The Arbitrator has assessed \$200.00 of the discovery-related motion fees to Claimant.

**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, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session @ \$50.00/session = \$ 50.00

Pre-hearing conference: January 17, 2019 1 session

Two (2) hearing sessions @ \$50.00/session = \$ 100.00

Hearing Dates: April 9, 2019 1 session

May 21, 2019 1 session

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Total Hearing Session Fees = \$ 150.00

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

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

**ARBITRATOR**

Jim Geiger

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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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Jim Geiger  
Sole Public Arbitrator

6/6/2019  
\_\_\_\_\_  
Signature Date

June 6, 2019

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