

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondents

Morgan Stanley DW Inc.
Morgan Stanley

Hearing Site: Detroit, Michigan

Nature of the Dispute: Associated Person vs. Members

REPRESENTATION OF PARTIES

For Claimant ██████████: Eric Litow, Esq. and Owen Harnett, Esq., HLBS Law, Westminster, Colorado.

For Respondents Morgan Stanley DW Inc. and Morgan Stanley: Andrew E. Gelfand, Esq., Morgan Stanley Wealth Management, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: July 10, 2018.

██████████ signed the Submission Agreement: July 10, 2018.

Statement of Answer filed by Respondents on or about: October 12, 2018.

Morgan Stanley DW Inc. signed the Submission Agreement: October 12, 2018.

Morgan Stanley signed the Submission Agreement: October 12, 2018.

CASE SUMMARY

Claimant asserted the cause of action of inaccurate reporting on his Central Registration Depository ("CRD") records relating to two customer complaints (Occurrence No. ██████████ and Occurrence No. ██████████)

In Occurrence No. ██████████ the customer alleged unsuitability in connection with his investments in Calpine Corporation Senior Notes.

In Occurrence No. ██████████ the customer alleged unsuitability, misrepresentation and unauthorized trading in connection with mutual fund investments as a part of Respondents' Fund Solutions and Consulting Group Advisor platforms.

In their Statement of Answer, Respondents stated that they take no position concerning the allegations in the Statement of Claim and do not oppose Claimant's request for expungement.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of all references to Occurrence No. [REDACTED] and Occurrence No. [REDACTED] from his CRD records; compensatory damages of \$1.00; and any and all relief that the Arbitrator deemed just and proper.

In the Statement of Answer, Respondents opposed any request for damages or other relief, but did not delineate a relief request.

At the close of the hearing, Claimant withdrew his 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.

On or about January 11, 2019, Claimant filed with FINRA Office of Dispute Resolution proof of service upon the underlying customers in connection with Occurrence No. [REDACTED] and Occurrence No. [REDACTED] of the Statement of Claim in this matter, notice of the date and time of the upcoming expungement hearing and of the underlying customers' right to participate therein. The customers did not submit any response thereto.

On or about January 18, 2019, Claimant filed with FINRA Office of Dispute Resolution an Affidavit attesting to service of the Statement of Claim upon the underlying customers in connection with Occurrence No. [REDACTED] and Occurrence No. [REDACTED]

The Arbitrator conducted a recorded telephonic hearing on February 14, 2019, so the parties could present oral argument and evidence on Claimant's request for expungement.

The underlying customers did not participate in the expungement hearing. Respondent participated in the expungement hearing and did not contest the request for expungement.

The Arbitrator reviewed the BrokerCheck® Report for Claimant. Respondents investigated the customers' complaints in connection with Occurrence No. [REDACTED] and Occurrence No. [REDACTED] and found them to be without merit, and denied them. Therefore, there were no settlement agreements for the Arbitrator to review.

The Arbitrator noted 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: all pleadings and exhibits filed; and Claimant's reliable testimony.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions, if any, 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 No. [REDACTED] and Occurrence No. [REDACTED] from registration records maintained by CRD for Claimant (CRD# [REDACTED]) with the understanding that, pursuant to Notice to Members 04-16, Claimant 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 ("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 No. [REDACTED]

Allegations of July 21, 2006: The customer alleged that Claimant recommended unsuitable high yield corporate bonds, which declined significantly in value, and that he was not informed of the financial instability of the corporation.

The allegations are false and clearly erroneous in that this customer came to Claimant with the express purpose of exchanging the proceeds of a high yield Levi Strauss corporate bond for a similar type of high yield corporate bond. The customer acknowledged in his complaint that he was aware that the Calpine Senior Bond was "B" rated. While the credit rating of Calpine ended up being downgraded as it went through Chapter 11 bankruptcy, Claimant kept the customer informed of all of the developments in relation to Calpine. In addition to the initial purchase of Calpine corporate bonds, the customer made an additional unsolicited purchase of Calpine corporate bonds, both of which were purchased at a discount from par value. Had the customer held the bonds to maturity, he would have received approximately 15% in interest payments, and would have had the opportunity to sell the Calpine bonds at a premium. No arbitration demand was filed and there was no settlement. The Claimant did not do anything wrong.

Occurrence No. 1603820

Allegations of February 23, 2012: The Customer alleged claims, inter alia, that in or around 2008, Claimant made misrepresentations and unauthorized transactions in unsuitable investments.

The allegations are false and clearly erroneous. The customer enrolled in a non-discretionary account, and, as such, the customer had to approve of all trading activity within her account. She received trade confirmations and account statements regarding any trades within her account. The allegations stem from activity around the 2008 market activity where, against the advice of Claimant, the customer liquidated bond funds and then the customer and her husband decided to keep approximately half of her portfolio in cash. Due to the customer not taking Claimant's advice, about half of the customer's portfolio missed out on the recovery after 2009. All of the investments were suitable as they consisted exclusively of mutual funds that were either part of Respondent's Fund Solution or Consulting Group Advisory platforms. These programs recommend certain mutual funds based on a questionnaire to determine the customer's objectives, risk tolerance, and time horizon, then were chosen by Claimant and discussed with the customer who ultimately had to approve of all trading activity. Respondent at one point converted Class A shares to Class I or P shares, which resulted in lower fees to the customer. This was communicated to the customer and her husband. No arbitration demand was filed and there was no settlement. The Claimant did not do anything wrong.

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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as parties, Respondents are assessed the following:

<u>Morgan Stanley DW Inc.</u>	
Member Surcharge	= \$150.00

<u>Morgan Stanley</u>	
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: December 17, 2018 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing Date: February 14, 2019 1 session

Total Hearing Session Fees = \$100.00

The Arbitrator has assessed the entire hearing session fees of \$100.00 to Claimant.

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

