

**Award**  
**FINRA Dispute Resolution Services**

---

In the Matter of the Arbitration Between:

Claimant  
Stuart Beinhacker

Case Number: 19-01170

vs.

Respondent  
Merrill Lynch, Pierce, Fenner & Smith Incorporated

Hearing Site: New York, New York

---

Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

Nature of the Dispute: Customer vs. Member

This case was decided by an all-public panel.

**REPRESENTATION OF PARTIES**

For Claimant Stuart Beinhacker: Adam J. Weinstein, Esq., Gana Weinstein LLP, New York, New York.\*

For Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated: Regina Pepe Martorana, Esq., and Thomas M. McHugh, Esq., Bressler, Amery & Ross P.C., New York, New York.

\*FINRA recorded the appearance of Claimant's counsel at the time of filing of the Statement of Claim. Counsel's representation of Claimant may have ended with the parties' settlement. Please see the Other Issues Considered and Decided section of this Award for information on whether Claimant's counsel appeared at the expungement hearing.

**CASE INFORMATION**

Statement of Claim filed on or about: April 27, 2019.  
Stuart Beinhacker signed the Submission Agreement: April 27, 2019.

Statement of Answer filed by Respondent on or about: July 19, 2019.  
Merrill Lynch Pierce Fenner & Smith Inc. signed the Submission Agreement: July 22, 2019.

### **CASE SUMMARY**

Claimant asserted the following causes of action: failure to supervise; aiding and abetting fraud; violation of FINRA Rule 2010; violation of suitability obligations; violation of FINRA Rule 2111, overconcentration, violation of FINRA Rule 2310; violation of FINRA Rule 2020 and IM-2310-2 including but not limited to fraudulent activity, misuse of customers' funds or securities, forgery, non-disclosure or misstatement of material facts, manipulations and various deceptions in violation of Association Rules, and recommending purchases beyond customer capability; negligent or fraudulent misrepresentations and omissions in violation of Federal and State Securities Law; New York Common Law Fraud and Common Law Negligence; violation of FINRA 2210; sale of unregistered investments; and control person liability under Section 20(a) of the Securities Exchange Act 1934, New York State Law, and respondeat superior. The causes of action relate to various annuities and investment related products.

Unless specifically admitted in the Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested compensatory damages of at least \$999,999.00, interest at the statutory rate, attorneys' fees, expert fees, forum fees, punitive damages, and such other and further relief as the Panel deems just and proper.

In the Statement of Answer, Respondent requested that an award be issued denying the Statement of Claim with prejudice in its entirety; expungement of all references to the above-captioned arbitration from the registration records of Unnamed Party Morgan McCarthy maintained by the Central Registration Depository ("CRD"); costs in defending against the Statement of Claim; and such other and further relief as may be just and proper.

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

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

On September 23, 2020, Claimant filed a notice of voluntary dismissal and settlement. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

On October 7, 2020, Respondent filed notice of their intent to file a Motion for Expungement on behalf of Unnamed Party Morgan McCarthy. On November 16, 2020, Claimant filed a letter in support of Morgan McCarthy's expungement request. On December 3, 2020, Respondent filed a Motion for Expungement on behalf of Unnamed Party Morgan McCarthy.

The Panel conducted a recorded telephonic hearing on December 14, 2020 so the parties could present oral argument and evidence on Respondent's request for expungement on behalf of Unnamed Party Morgan McCarthy.

Claimant and counsel did not participate in the expungement hearing and did not oppose the request for expungement.

The Panel reviewed the BrokerCheck® Report for Morgan McCarthy. The Panel noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrence in the Central Registration Depository (“CRD”).

The Panel also reviewed the settlement documents, considered the amount of payments made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Panel noted that the settlement was not conditioned on any party to the settlement not opposing the request for expungement and that Morgan McCarthy did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: the pleadings, the parties’ Submission Agreements, the Petition for Expungement including exhibits, Claimant counsel’s letter dated November 16, 2020 supporting the expungement request, the settlement agreement, the BrokerCheck® Report for Unnamed Party Morgan McCarthy, and the Affirmation of Respondent’s counsel advising that the settlement agreement was not conditioned on any party to the settlement not opposing the expungement request.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and any post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2030950) from registration records maintained by the CRD for Unnamed Party Morgan McCarthy (CRD Number 5888503) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Morgan McCarthy 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 12805 of the Code of Arbitration Procedure (“Code”), the Panel has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; the registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and the claim, allegation, or information is false.

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

The Panel found no evidence that Unnamed Party Morgan McCarthy (“McCarthy”) was aware of the actions of, or colluded with, a bank affiliate employee as alleged in the Statement of Claim. The Panel found that McCarthy was no longer employed by Respondent’s broker-dealer side of the business at the time that the conduct alleged in

the Statement of Claim occurred. The Panel concluded that McCarthy had no knowledge of, or participation in, any of the fraudulent, violative, and improper acts and omissions alleged by the customer.

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

### **FEES**

Pursuant to the Code of Arbitration Procedure (“Code”), the following fees are assessed:

#### **Filing Fees**

FINRA Dispute Resolution Services assessed a filing fee\* for each claim:

Initial Claim Filing Fee = \$ 1,725.00

*\*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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated is assessed the following:

Member Surcharge = \$ 2,475.00  
Member Process Fee = \$ 5,075.00

#### **Late Pre-hearing Cancellation Fees**

Fees apply when a pre-hearing conference is cancelled within three business days of the scheduled conference:

September 3, 2019, cancellation requested by parties = \$ 300.00

---

Total Late Pre-hearing Cancellation Fees = \$ 300.00

The Panel has assessed \$150.00 of the late pre-hearing cancellation fees to Claimant.  
The Panel has assessed \$150.00 of the late pre-hearing cancellation fees to Respondent.

#### **Postponement Fees**

Postponements granted during these proceedings for which fees were assessed or waived:

September 29, 2019 to October 2, 2019, postponement requested by the parties WAIVED

#### **Hearing Session Fees and Assessments**

The Panel 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, which lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) hearing session on expungement request @ \$1,300.00/session = \$ 1,300.00  
Hearing Date: December 14, 2020 1 session

---

Total Hearing Session Fees	= \$ 1,300.00
----------------------------	---------------

The Panel has assessed the total hearing session fees to Respondent.

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

**ARBITRATION PANEL**

Donna Christina Chin	-	Public Arbitrator, Presiding Chairperson
Clarence Smith, Jr.	-	Public Arbitrator
Elisse R. Stern	-	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.

**Concurring Arbitrators' Signatures**

***Donna Christina Chin***

\_\_\_\_\_  
Donna Christina Chin  
Public Arbitrator, Presiding Chairperson

**01/08/2021**

\_\_\_\_\_  
Signature Date

***Clarence Smith, Jr.***

\_\_\_\_\_  
Clarence Smith, Jr.  
Public Arbitrator

**01/06/2021**

\_\_\_\_\_  
Signature Date

***Elisse R. Stern***

\_\_\_\_\_  
Elisse R. Stern  
Public Arbitrator

**01/08/2021**

\_\_\_\_\_  
Signature Date

Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

January 08, 2021

\_\_\_\_\_  
Date of Service (For FINRA Dispute Resolution Services use only)