

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

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In the Matter of the Arbitration Between:

Claimant  
Philip E. Rosensweig

Case Number: 19-02864

vs.

Respondent  
Morgan Stanley  
Cantella & Co., Inc.  
Laidlaw & Company (UK) Ltd.  
GunnAllen Financial, Inc

Hearing Site: Boca Raton, Florida

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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: Associated Person vs. Members

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimant Philip E. Rosensweig: Joshua A. Katz, Esq., Sallah Astarita & Cox, LLC, Boca Raton, Florida.

For Respondent Morgan Stanley (“MS”): Christopher M. Sacco, Esq., Morgan Stanley, Saint Petersburg, Florida.

For Respondent Cantella & Co., Inc. (“Cantella”): Jay Lanstein, Esq., Cantella & Co., Inc., Malden, Massachusetts.

For Respondent Laidlaw & Company (UK) Ltd. (“Laidlaw”): Charles Smulevitz, Esq., Laidlaw & Company (UK) LTD, New York, New York.

Respondent GunnAllen Financial, Inc. (“GunnAllen”) did not appear.

**CASE INFORMATION**

Statement of Claim filed on or about: September 23, 2019.

Philip E. Rosensweig signed the Submission Agreement: September 23, 2019.

Statement of Answer filed by Respondent MS on or about: November 12, 2019.

MS signed the Submission Agreement: November 12, 2019.

Statement of Answer filed by Respondent Cantella on or about: October 31, 2019.  
Cantella signed the Submission Agreement: November 1, 2019.

Statement of Answer filed by Respondent Laidlaw on or about: November 13, 2019.  
Laidlaw signed the Submission Agreement: November 13, 2019.

GunnAllen did not file a Statement of Answer and did not sign the Submission Agreement.

Amended Statement of Claim filed on or about: December 11, 2020.

### **CASE SUMMARY**

In the Statement of Claim, as amended, Claimant asserted a claim seeking expungement of customer dispute information from registration records maintained by the Central Registration Depository ("CRD").

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

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

In the Statement of Answer, Respondent Laidlaw did not contest Claimant's expungement request.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested: expungement of Occurrence Numbers 367450, 241859, 1873451, 1873452, 1873453, 161058, 258991, 367444, 1126846, 1141542 and 1326447; compensatory damages in the amount of \$1.00; and any and all other relief that the Arbitrator deemed just and equitable.

In the Statement of Answer, Respondent MS requested the denial of Claimant's request for compensatory damages in the amount of \$1.00, and the assessment of all forum fees to Claimant.

In the Statement of Answer, Respondent Cantella requested the denial of Claimant's request for compensatory damages in the amount of \$1.00, and the assessment of all forum fees to Claimant.

In the Statement of Answer, Respondent Laidlaw requested the denial of Claimant's request for compensatory damages in the amount of \$1.00, and the assessment of all forum fees to Claimant.

In his Amended Statement of Claim, Claimant withdrew his request for expungement of Occurrence Number 367444 without prejudice, and Respondents MS and Cantella respectively consented to the withdrawal without prejudice.

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

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

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

Respondent GunnAllen did not file a Statement of Answer or a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and is bound by the determination of the Arbitrator on all issues submitted.

On December 8, 2020, Claimant's counsel filed a Declaration advising that the customers in Occurrence Numbers 367450 ("Customer A"), 241859 ("Customer B"), 1873451 ("Customer C"), 1873452 ("Customer D"), 1873453 ("Customer E"), 161058 ("Customer F"), 258991 ("Customer G"), 1126846 ("Customers H and I"), 1141542 ("Customers J and K") and 1326447 ("Customers L and M") were served with the Statement of Claim and with notice of the date and time of the expungement hearing. In his Declaration, Claimant's counsel also noted that after attempting service, he learned that Customers J, L and M had passed away.

On or about December 10, 2020, Claimant filed a Motion for Leave to file an Amended Statement of Claim, in which, among other things, Claimant withdrew his request for expungement of Occurrence Number 367444 without prejudice as he was not able to serve the customer. The proposed amendment also sought to correct factual allegations related to the expungement of Occurrence Number 367450, wherein Claimant had initially alleged that Customer A was not a CPA, contrary to Customer A's representations, and that Customer A had been convicted of crimes, neither of which was found to be true by the Arbitrator.

The Arbitrator conducted a recorded videoconference hearing on December 11, 2020, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent MS's counsel participated in the portion of the expungement hearing relevant to the Occurrence Numbers relevant to MS and did not oppose the request for expungement.

Respondents Cantella, Laidlaw and GunnAllen did not participate in the expungement hearing. Upon review of the file, the Arbitrator determined that Respondents Cantella, Laidlaw and Gunallen received due notice of the hearing and that arbitration of the matter would proceed without said Respondents present, in accordance with the Code.

Counsel for the Customer for Occurrence Number 367450 did participate in the expungement hearing and the Customer did not oppose the expungement request.

The Customers for all other Occurrence Numbers at issue did not participate in the expungement hearing.

The Arbitrator found that Claimant took sufficient reasonable steps to notify the Customers for the Occurrence Numbers at issue with the expungement request and hearing.

At the outset of the expungement hearing, with the agreement of all present, the Arbitrator heard oral argument on Claimant's Motion for Leave to file an Amended Statement of Claim, which was read into the record. Respondent MS stated that it did not object to the filing of the Amended

Statement of Claim. The Customer for Occurrence Number 367450 did not object to the filing of the Amended Statement of Claim. Because Claimant filed the Motion the day prior, the Arbitrator granted the Motion to File an Amended Statement of Claim with the proviso that the parties not present at the hearing would have the opportunity to respond under the Code-provided briefing deadlines. Respondents Cantella, Laidlaw, GunnAllen and the Customers for all Occurrence Numbers at issue did not file responses and did not object to the Motion or the proposed Amended Statement of Claim. Accordingly, the Amended Statement of Claim was deemed filed by the Arbitrator as of the date of the expungement hearing.

The Arbitrator reviewed Claimant's BrokerCheck® Report. The Arbitrator noted that a prior arbitration panel or court did not previously rule on expungement of the same occurrences in the CRD.

The Arbitrator also reviewed the settlement documents for Occurrence Numbers 367450, 1873451, 1873452, 1873453 and 161058, considered the amount of payments made to any party to the settlements, and considered other relevant terms and conditions of the settlements. The Arbitrator noted that the settlements were not conditioned on any party to the settlements not opposing the expungement request and that Claimant did not contribute to the settlement amounts.

The Arbitrator noted that the disputes related to Occurrence Numbers 241859, 258991, 1126846, 1141542 and 1326447 were not settled and, therefore, there were no settlement documents to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the testimony of Claimant; the testimony of Customer A; the Declaration of Claimant's counsel; and the pleadings in the underlying arbitration for Occurrence Number 367450.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the expungement hearing, and any post-hearing submissions, 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 367450, 241859, 1873451, 1873452, 1873453, 161058, 258991, 1126846, 1141542 and 1326447 from registration records maintained by the CRD for Claimant Philip E. Rosensweig (CRD Number 1125274) 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, the Arbitrator 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 Arbitrator has made the above Rule 2080 findings based on the following reasons:

As to Occurrence Number 367450:

The unrebutted and credible testimony established that Claimant was out of the office for medical leave at the time of the complained communications; that Customer A was sued by a trust beneficiary and had to defend the investments in the account and that case was ultimately resolved entirely in Customer A's favor; that the claim was settled for a fraction of the relief requested without the contribution of Claimant. The claim is false, and Claimant was not involved in any alleged sales practice violation.

As to Occurrence Number 241859:

The credible and unrebutted testimony was that Claimant's normal practice was to contact clients when they took significant losses, but that there was no undertaking to do so here and no other duty to do so; that any use of margin by Customer B was at the customer's request, that Customer B claimed losses of about \$30,000.00, but did not follow up when the firm denied the claim. The claim is false and, as the alleged omission did not violate any duty, was factually impossible.

As to Occurrence Numbers 1873451, 1873452 and 1873453:

The credible and unrebutted testimony established that Customer C had a very wide variety of investments, included syndicated banking products, an area in which Claimant could offer some opportunities; that Claimant provided a prospectus and offering memoranda for the products, and made no representations outside of those; that Claimant disclosed all risks; that Customer D was not a customer of Claimant, but allegedly purchased products at another brokerage that Claimant had discussed with Customer C and which Customer C had purchased; that the investments complained of were small portions of each of the Customers' portfolios; that the claims were settled for a minimal monetary amount without the participation or contribution of Claimant. Also, Claimant made no representations to Customer E. The purchase in question was a small part of his portfolio and his claim was part of a group of claims settled together for much less than the alleged damages without Claimant paying any of it. The claims are false. As to Customer D, the claims are also clearly erroneous.

As to Occurrence Number 161058:

The credible and unrebutted testimony established that Customer F (a securities lawyer and sophisticated investor) chose to switch away from the money managers he selected with help from Claimant and engage in trading in common stocks; that there was no suggestion that Claimant was licensed as an investment advisor; that Claimant did not tout a stop loss system and it was not his practice to recommend or engage in commodities and did not

regularly trade in options; that the claim was settled for a minimal monetary amount without the participation or contribution of Claimant. The allegations against Claimant are false.

As to Occurrence Number 258991:

The credible and un rebutted evidence established that Claimant correctly answered a question about Respondent MS's recommendations. Customer G then made a purchase based on that answer. There was no evidence of any sales practice violation. Customer G never made any formal complaint. The claim, to the extent it asserts a sales practice violation, is false.

As to Occurrence Number 1126846:

The credible and un rebutted evidence established that the Customers H and I did not have an account at the brokerage firm at which Claimant was employed. The claim is factually impossible, clearly erroneous and false, and the Claimant was not involved in any alleged sales practice violation.

As to Occurrence Number 1141542:

The credible and un rebutted testimony established that the trades were unsolicited, and that Customers J and K were sophisticated and understood the risks of their trading. Documentary evidence corroborated that testimony. The firm denied the complaint and Customers J and K, who had counsel, took no further action. The claim is false.

As to Occurrence Number 1326447:

The credible and un rebutted testimony established that Claimant was neither the broker nor the supervisor of the broker on the relevant accounts for Customers L and M, and the claim was settled for a minimal monetary amount, without contribution from Claimant or even his consent. The claim is false, and Claimant was not involved in any alleged sales practice violation.

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

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

FINRA Dispute Resolution Services 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 firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as parties, Respondents MS, Cantella, Laidlaw and GunnAllen are each assessed the following:

For MS:

Member Surcharge = \$ 150.00

For Cantella:

Member Surcharge = \$ 150.00

For Laidlaw:

Member Surcharge = \$ 150.00

For GunnAllen:

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, including a pre-hearing conference with the Arbitrator, which 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: January 22, 2020 1 session

Two (2) hearing sessions on expungement request @ \$50.00/session = \$ 100.00  
Hearing Date: December 11, 2020 2 sessions

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Total Hearing Session Fees = \$ 150.00

The Arbitrator has assessed the total hearing session fees to Claimant.

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

**ARBITRATOR**

Will Murphy

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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**

***Will Murphy***

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Will Murphy  
Sole Public Arbitrator

**02/03/2021**

\_\_\_\_\_  
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.

February 04, 2021

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