

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

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In the Matter of the Arbitration Between:

Claimant  
Estate of Gary Lynnes

Case Number: 20-00668

vs.

Respondent  
Morgan Stanley

Hearing Site: Bismarck, North Dakota

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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: Customer vs. Member

This case was decided by an all-public panel.

**REPRESENTATION OF PARTIES**

Claimant Estate of Gary Lynnes (“Claimant”) was represented by Chad M. Kohler, Esq., Meyer Wilson, Co., LPA, Columbus, Ohio, until July 13, 2021. Thereafter, Claimant was represented by the personal representative for the Estate, Ty Lynnes.

For Respondent Morgan Stanley (“Respondent”): Andrew E. Gelfand, Esq., Morgan Stanley Wealth Management, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: February 27, 2020.

Claimant signed the Submission Agreement: February 27, 2020.

Statement of Answer filed on or about: May 7, 2020.

Respondent signed the Submission Agreement: May 6, 2020.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action: negligence, unsuitability, failure to supervise, violation of FINRA Rules 2010, 2020, and 2150, breach of fiduciary duty, breach of contract, and respondeat superior. The causes of action related to Claimant’s allegation that he was sold numerous unsuitable investments, including over-concentrated positions in energy stocks and alternative investments.

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 actual damages in an amount to be determined but reasonably believed to be in excess of \$500,000.00; pre- and post-judgment interest at the legal rate; attorneys' fees; costs of arbitration, including FINRA filing fees, expert witness fees, arbitrator fees, and all forum fees and expenses; and such other and any further relief as the Panel deems just, proper, and equitable.

In the Statement of Answer, Respondent requested that the Statement of Claim be denied in its entirety and that Respondent be awarded its costs.

Respondent filed a request for expungement, on behalf of Unnamed Parties Steven Wurzer ("Wurzer") and James Syvertson ("Syvertson"), of all references to this matter from Central Registration Depository ("CRD") registration records. Please see the Other Issues Considered and Decided section of this Award for more information.

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

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

On May 19, 2021, Claimant filed a notice of voluntary dismissal with prejudice. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

On July 8, 2021, Respondent filed an Application for Expungement Recommendation on behalf of Unnamed Parties Wurzer and Syvertson ("Motion for Expungement"). On July 13, 2021, Claimant filed a Response to the Motion for Expungement, in which he took no position on the Motion for Expungement.

The Panel conducted a recorded, telephonic hearing on August 17, 2021, so the parties could present oral argument and evidence on Respondent's request for expungement on behalf of Unnamed Parties Wurzer and Syvertson.

The personal representative for the Estate participated in the expungement hearing and did not oppose the request for expungement.

The Panel reviewed Wurzer and Syvertson's BrokerCheck® Reports. The Panel noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrences in the CRD.

The Panel also reviewed the settlement documentation, considered the amount of payment 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 neither Wurzer nor Syvertson contributed to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Motion for Expungement; Statement of Claim; Statement of Answer; settlement agreement; BrokerCheck® Reports for Wurzer and Syvertson; and testimony of Wurzer, Syvertson, and the personal representative of the Estate.

The Award in this matter may be executed in counterpart copies.

### **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 Numbers 2064877 and 2065690) from registration records maintained by the CRD for Unnamed Parties Steven Paul Wurzer (CRD Number 2429427) and James Arnold Syvertson (CRD Number 2289132) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Parties Steven Paul Wurzer and James Arnold Syvertson 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:

Neither Wurzer nor Syvertson recommended, solicited, or executed the trades giving rise to the Statement of Claim. They recommended a balanced conservative approach, but Gary Lynnes wanted a higher return and invested in energy limited partnerships that he found through his estate planning lawyer, ignoring the advice of Wurzen and Syvertson. The personal representative of the Estate testified that he understood why the moving parties wanted expungement and had no objection. Further, he testified that the problem was with another individual within Morgan Stanley and with Morgan Stanley, not Wurzer or Syvertson.

2. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages and treble damages, are denied.



**ARBITRATION PANEL**

Daniel M. Yamshon	-	Public Arbitrator, Presiding Chairperson
Barbara M. Anscher	-	Public Arbitrator
Kerry C. Koep	-	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.

**Concurring Arbitrators' Signatures**

***Daniel M. Yamshon***

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Daniel M. Yamshon  
Public Arbitrator, Presiding Chairperson

**08/26/2021**

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

***Barbara M. Anscher***

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Barbara M. Anscher  
Public Arbitrator

**08/26/2021**

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

***Kerry C. Koep***

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Kerry C. Koep  
Public Arbitrator

**08/27/2021**

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

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August 27, 2021

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