

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Chesley Venable Morton, Jr.

Case Number: 20-01198

vs.

Respondent

B. Riley Wealth Management

Hearing Site: Atlanta, Georgia

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. Member

REPRESENTATION OF PARTIES

For Claimant Chesley Venable Morton, Jr. (“Claimant”): Kurt Zimmerman, Esq. and Docthor Kennedy, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent B. Riley Wealth Management (“Respondent”): Michael Markunas, Esq., B. Riley Wealth Management, Los Angeles, California.

CASE INFORMATION

Statement of Claim filed on or about: April 14, 2020.

Claimant signed the Submission Agreement: April 13, 2020.

Statement of Answer filed on or about: June 4, 2020.

Respondent signed the Submission Agreement: December 7, 2020.

CASE SUMMARY

In the Statement of Claim, 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 issued a general denial of the allegations made in the Statement of Claim.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Number 1466450, an award of compensatory damages in the amount of \$1.00, and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent did not request any specific relief.

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

OTHER ISSUES CONSIDERED AND DECIDED

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

On August 26, 2020, Claimant advised that one of the customers in Occurrence Number 1466450 ("Customer") was served with the Statement of Claim and notice of the date and time of the expungement hearing ("Notice"). On September 1, 2020, Claimant filed an Affidavit confirming that the Customer was served with the Notice. Claimant also filed a copy of the FedEx tracking information available online for the Notice. On December 2, 2020, Claimant filed a copy of the death record for the other customer in Occurrence Number 146450.

The Arbitrator conducted a recorded, telephonic hearing on January 5, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing.

The Customer did not participate in the expungement hearing. The Arbitrator found that the Customer had notice of the expungement request and 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 occurrence in the CRD.

The Arbitrator 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 Arbitrator noted that the settlement was not conditioned on any party to the settlement not opposing the expungement request and that Claimant did contribute to the settlement amount. The Arbitrator further noted that the settlement amount was significantly less than the amount requested.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: all documents submitted by Claimant and Respondent and Claimant's testimony.

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 Number 1466450 from registration records maintained by the CRD for Claimant Chesley Venable Morton, Jr. (CRD Number 1372000) with the understanding that, pursuant to Notice to Members 04-16, Claimant Chesley Venable Morton, Jr. 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:

The great preponderance of the evidence presented shows that the customers’ claim that they were placed in high-risk investments that did not match their investment objective and financial situation by Claimant is clearly erroneous and false. The customers were married and Claimant was distantly related to the wife. The customers had investment experience for over 10 years, and had fired their prior financial advisor at another firm for not obtaining the investment return they wanted. Claimant spoke to the husband frequently about their investments. The customers’ investment profile changed over time. Initially it was moderate growth and income, then higher than moderate, and evolved to high risk. The customers were looking for ways to increase their income. The Option Strategy was discussed in full and agreed upon by the customers. Claimant never exercised any discretion in the customers’ accounts. Claimant always discussed decisions with the husband and got approval before any action was taken. The strategy was very successful for a long period of time. During the 2008 recession, the customers’ investments declined. The customers spoke with their certified public accountant, who recommended that they take action against their broker. The customers filed an arbitration claim against the brokerage firm for \$611,642.37 in damages. The customers and the brokerage firm settled for \$177,000.00 to avoid litigation costs and the brokerage firm denied any liability. Pursuant to the terms of an Indemnification Agreement, Claimant paid the brokerage firm the sum of \$100,000.00.

The Arbitrator finds that the customers’ allegation is not supported by the evidence, and therefore, is clearly erroneous and false. It appears that the customers wanted someone to make up for their loss, but there was no wrongdoing on Claimant’s part. Therefore, expungement is recommended.

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
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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 persons at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge Fee	=\$ 150.00
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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 @ \$50.00/session	=\$ 50.00
Pre-Hearing Conference: August 6, 2020 1 session	
One (1) hearing session on expungement request @ \$50.00/session	=\$ 50.00
Hearing Date: January 5, 2021 1 session	
Total Hearing Session Fees	=\$ 100.00

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

Michael J. Ahlstrom

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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

Michael J. Ahlstrom

Michael J. Ahlstrom
Sole Public Arbitrator

01/20/2021

Signature Date

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January 20, 2021

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