

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

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In the Matter of the Arbitration Between:

Claimant  
Raymond M. Stacy

Case Number: 20-01785

vs.

Respondent  
Morgan Stanley

Hearing Site: Cincinnati, Ohio

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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. Member

This case was administered under the Special Proceeding option for simplified cases.

**REPRESENTATION OF PARTIES**

For Claimant Raymond M. Stacy (“Claimant”): Brian Luther, Esq., FA Expungement, LLC, Denver, Colorado.

For Respondent Morgan Stanley, Morgan Stanley Smith Barney, LLC appeared as the real party in interest (“Respondent”): Jeremy S. Winer, Esq., Morgan Stanley, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: June 5, 2020.

Claimant signed the Submission Agreement: June 5, 2020.

Statement of Answer filed on or about: July 27, 2020.

Respondent signed the Submission Agreement: July 27, 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 took no position on Claimant’s expungement request.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers 1191523 and 1401767 and an award of compensatory damages in the amount of \$1.00.

In the Statement of Answer, Respondent opposed Claimant's request for \$1.00 in compensatory damages.

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.

The Arbitrator conducted a recorded, telephonic hearing on January 19, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing.

The Arbitrator has provided an explanation of the decision in this award. The explanation is for the information of the parties only and is not precedential in nature.

### **ARBITRATOR FINDINGS**

Claimant's counsel certified that he had sent notice by regular and certified mail to the known addresses of the customers whose complaints are at issue. None of the customers appeared at the expungement hearing. Notwithstanding the absence of any input from the underlying customers or any opposing witnesses, Claimant failed to present sufficient evidence to merit the exceptional remedy of expungement. The grossly inadequate direct examination was not only unusually brief but consisted largely of unspecific, leading questions to Claimant, the sole witness. The direct examination was without any reference whatsoever to the produced documents and answered similarly. Indeed, counsel did not initially provide his witness, who was in a separate location, a copy of any documents. Such direct examination provided little factual support to the allegations in the pleadings. Moreover, the documentary evidence seemed unusually incomplete, thin, and inadequate relative to what one would expect diligent discovery to yield from the records of Respondent, a well-established brokerage house that had employed Claimant throughout the relevant periods, or from Claimant's records, especially the client contact records, maintained in the ordinary course of business by a financial advisor. In addition, the sole witness lacked credibility in response to some questions posed by the Arbitrator.

### **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:

Claimant's request for expungement of Occurrence Numbers 1191523 and 1401767 from his registration records maintained by the CRD is denied.

**FEES**

Pursuant to the Code of Arbitration Procedure, 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 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

**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: September 29, 2020 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00  
Hearing Date: January 19, 2021 1 session

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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**

John W. Eichleay, Jr.

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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**

***John W. Eichleay, Jr.***

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John W. Eichleay, Jr.  
Sole Public Arbitrator

**01/26/2021**

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Signature Date

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January 26, 2021

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