

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

James P. Lombardo, Jr.

Case Number: 20-01929

vs.

Respondent

Morgan Stanley Smith Barney LLC

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: Associated Person vs. Member

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant James P. Lombardo, Jr.: James E. Heavey, Esq., Barton LLP, New York, New York.

For Respondent Morgan Stanley Smith Barney LLC: Jeremy S. Winer, Esq., Morgan Stanley, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: June 18, 2020.

James P. Lombardo, Jr. signed the Submission Agreement: June 18, 2020.

Statement of Answer filed by Respondent on or about: September 9, 2020.

Morgan Stanley Smith Barney LLC signed the Submission Agreement: September 9, 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 Number 2021456.

OTHER ISSUES CONSIDERED AND DECIDED

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

On November 3, 2020, Claimant advised that the customer in Occurrence Number 2021456 was served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Panel conducted a recorded hearing by videoconference on February 16, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing and did not oppose the request for expungement.

The customer did not participate in the expungement hearing. The Panel found that the customer had notice of the expungement request and hearing.

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

The Panel also reviewed the settlement documentation related to Occurrence Number 2021456, 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 expungement request and that Claimant did not contribute to the settlement amount.

The Panel noted that the terms of the settlement, including the amount paid, were negotiated by those who advised the customer at the time of the complained of investments. Claimant was not involved with the customer's account at that time and did not participate in the settlement negotiations. This fact is consistent with Claimant's theory of the case, that he was not involved with the customer at the time of the contested investment decisions.

In recommending expungement, the Panel relied upon the following documentary or other evidence: the pleadings, exhibits, Claimant's BrokerCheck® Report, and Claimant's testimony.

AWARD

After considering the pleadings, the testimony and evidence presented at the expungement 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 Occurrence Number 2021456 from registration records maintained by the CRD for Claimant James P. Lombardo, Jr. (CRD Number 2708865) with the understanding that, pursuant to Notice to Members 04-16,

Claimant James P. Lombardo, 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 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 original customer claim specified that unsuitable investments were recommended and made in 2013. Claimant was not assigned to the customer's account until approximately 2017. Prior to his assignment, Claimant had no interactions with the customer, her account, or her investment decisions, either directly or indirectly.

For these reasons, the Panel concluded that expungement is warranted for all three circumstances set forth in Rule 2080. Sub-section 2080(b)(1)(A) allows for expungement where the claim was clearly erroneous. The claim here must be so because Claimant had no interaction with the customer or the account with respect to the alleged wrongful transaction; sub-section(b)(1)(B) allows for expungement where Claimant was not involved in the underlying events upon which the claim is based, a set of circumstances also present in this case; and sub-section(b)(1)(C) allows for expungement where, as here, the claim was false as to Claimant.

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 = \$ 1,575.00

**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 event giving rise to the dispute. Accordingly, as a party, Respondent Morgan Stanley Smith Barney LLC is assessed the following:

Member Surcharge = \$ 1,900.00

Member Process Fee = \$ 3,750.00

Hearing Session Fees and Assessments

The Arbitrators 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) pre-hearing session with the Panel @ \$1,125.00/session = \$ 1,125.00
Pre-Hearing Conference: October 14, 2020 1 session

One (1) hearing session on expungement request @ \$1,125.00/session = \$ 1,125.00
Hearing: February 16, 2021 1 session

Total Hearing Session Fees = \$ 2,250.00

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

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

ARBITRATION PANEL

Peter E. Gillespie	-	Public Arbitrator, Presiding Chairperson
Brian John Gallagher	-	Public Arbitrator
Steven Gargiulo	-	Non-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

Peter E. Gillespie

Peter E. Gillespie
Public Arbitrator, Presiding Chairperson

03/01/2021

Signature Date

Brian John Gallagher

Brian John Gallagher
Public Arbitrator

03/01/2021

Signature Date

Steven Gargiulo

Steven Gargiulo
Non-Public Arbitrator

03/01/2021

Signature Date

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March 02, 2021

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