

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Russell Alan Abbott

Case Number: 20-01974

vs.

Respondent
Morgan Stanley & Co. LLC

Hearing Site: San Francisco, California

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 Russell Alan Abbott (“Claimant”): Benjamin Winograd, Esq., HLBS Law, Westminster, Colorado.

For Respondent Morgan Stanley & Co. LLC (“Respondent”): Simon M. Levy, Esq., Keesal, Young & Logan, A Professional Corporation, San Francisco, California.

CASE INFORMATION

Statement of Claim filed on or about: June 23, 2020.
Claimant signed the Submission Agreement: June 23, 2020.

Statement of Answer filed by Respondent on or about: August 14, 2020.
Respondent signed the Submission Agreement: August 20, 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:

1. Expungement of Occurrence Number 1441839 from his CRD records pursuant to FINRA Rule 2080(b)(1)(A), as the claim, allegation or information is factually impossible or clearly erroneous;
2. Expungement of Occurrence Number 1441839 from his CRD records pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation or information is false;
3. Deletion of all Disclosure Reporting Pages accompanying Occurrence Number 1441839;
4. Compensatory damages in the amount of \$1.00 from Respondent; and
5. Any and all other relief that the Arbitrator deems just and equitable.

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

At 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.

On December 1, 2020, Claimant advised that the customer in Occurrence Number 1441839 ("Customer") was served with the Statement of Claim and notice of the date and time of the expungement hearing. On December 8, 2020, Claimant filed an Affidavit confirming that the Customer was served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded, telephonic hearing on January 27, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing and, as stated in the Statement of Answer, did not oppose the request for expungement.

The Customer did not participate in the expungement hearing. The Customer submitted a letter, dated January 22, 2021, expressing his opposition to Claimant's expungement request ("Customer Letter"). 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 documentation, considered the amounts paid, and considered any 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 not contribute to the settlement amount.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the Statement of Claim; the Statement of Answer; Claimant's testimony; Claimant's Exhibits; Claimant's BrokerCheck® Report; and the Customer Letter.

AWARD

After considering the pleadings, the testimony and evidence presented at the expungement hearing, 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 1441839 from registration records maintained by the CRD for Claimant Russell Alan Abbott (CRD Number 2028654) with the understanding that, pursuant to Notice to Members 04-16, Claimant Russell Alan Abbott 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.

The claim, allegation, or information is false.

The Arbitrator has made the above Rule 2080 findings based on the following reasons:

Claimant seeks expungement of Occurrence Number 1441839, wherein the Customer alleged that Claimant "failed to follow instructions when he did not place an order to sell the customer's stock when it dropped 5% in value."

The Customer had been a client of Claimant since 2002. In that time, Claimant and the Customer discussed stop orders in general and how they worked. The Customer did not direct Claimant to put any stop orders in the Customer's account. As the Customer's account was non-discretionary, any stop order required the Customer's authorization in advance.

Due to the financial crisis in 2008, a specific stock in the Customer's portfolio declined by 5%. Both Claimant and Respondent deny that the Customer provided the alleged instruction to sell. In fact, the day after the disputed stock dropped in price, the Customer requested that the disputed stock be purchased in his account.

At no time did the Customer direct Claimant to put a stop order in place. As the Customer's account with Claimant was non-discretionary, in order to have a stop order in place, the Customer would have had to authorize a stop order in advance. The Customer's allegation that Claimant failed to follow instructions to place an order to sell the disputed stock when it dropped 5% percent in value is clearly erroneous and false and, therefore, meets the standards for expungement set forth in FINRA Rules 2080(b)(1)(A) and 2080(b)(1)(C).

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 firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge	= \$	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 with a single Arbitrator @ \$50.00/session	= \$	50.00
Pre-hearing Conference: October 8, 2020	1 session	

One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing: January 27, 2021	1 session	

Total Hearing Session Fees	= \$	100.00
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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

Laurel Littman Gothelf

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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

Laurel Littman Gothelf

Laurel Littman Gothelf
Sole Public Arbitrator

02/08/2021

Signature Date

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February 09, 2021

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