

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

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In the Matter of the Arbitration Between:

Claimant  
Russell Alan Abbott

Case Number: 20-01975

vs.

Respondent  
Morgan Stanley DW Inc.

Hearing Site: San Francisco, California

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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

**REPRESENTATION OF PARTIES**

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

For Respondent Morgan Stanley DW Inc. (“Respondent”): Simon M. Levy, Esq., Keesal, Young & Logan, 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 12, 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 Numbers 1143429, 1059882, and 1183059 from his CRD records pursuant to rules 2080(b)(1)(A) and 2080(b)(1)(C);
2. Compensatory damages in the amount of \$1.00 from Respondent; and
3. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent objected to 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 January 12, 2021, Claimant advised that the customer in Occurrence Number 1183059 ("Customer D") was served with the Statement of Claim and notice of the date and time of the expungement hearing. On January 19, 2021, Claimant filed an Affidavit confirming that Customer D was served with the Statement of Claim and notice of the date and time of the expungement hearing.

On January 12, 2021, Claimant advised that the customer in Occurrence Numbers 1143429 ("Customer P") was served with the Statement of Claim and notice of the date and time of the expungement hearing. On January 19, 2021, Claimant filed an Affidavit confirming that the Customer P was served with the Statement of Claim and notice of the date and time of the expungement hearing.

On January 12, 2021, Claimant advised that the customer in Occurrence Numbers 1059882 ("Customer Z") was served with the Statement of Claim and notice of the date and time of the expungement hearing. On January 19, 2021, Claimant filed an Affidavit confirming that the Customer Z was served with the Statement of Claim and notice of the date and time of the expungement hearing.

Hereinafter, Customer D, Customer P, and Customer Z will collectively be referred to as Customers.

The Arbitrator conducted a recorded, telephonic hearing on February 23, 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 Customers did not participate in the expungement hearing. The Arbitrator found that the Customers 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 occurrences in the CRD.

The Arbitrator also reviewed the settlement documentation related to Occurrence Numbers 1143429 and 1059882, considered the amount of payment made to any party to the

settlements, and considered other relevant terms and conditions of the settlements. The Arbitrator noted that the settlements were not conditioned on any party to the settlements not opposing the expungement request and that Claimant did not contribute to the settlement amounts.

The Arbitrator noted that the dispute related to Occurrence Number 1183059 was not settled and, therefore, there was no settlement document to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's BrokerCheck® report; Statement of Claim with exhibits; and testimony provided by Claimant at the expungement hearing.

### **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 Numbers 1059882, 1143429, and 1183059 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:

#### **Occurrence Number 1059882**

Customer Z's claim of inappropriate investments in aggressive stocks in the spring of 2000 is clearly erroneous and false. Customer Z was looking to place funds in the stock market with an investment objective of growth. There was no liquidity need and the investment time horizon was 10-15 years. Based on this, Claimant made various recommendations of equity securities that were solid, long-term growth investments. He explained the details of the recommendations, including costs, fees, risks, terms, advantages, and disadvantages.

Customer Z purchased technology equities that were recommended by Claimant, which constituted 10% of the portfolio. Between 2000 and 2001, due to market downturn, Customer Z's equities declined in value. Against the advice of Claimant, Customer Z liquidated the

securities, resulting in a loss. Claimant had a reasonable basis to believe that the recommendations were suitable for Customer Z based on the reasonable diligence of the investor profile, as well as the direct statements from the Customer.

**Occurrence Number 1143429**

Customer P's claim that aggressive technology stocks and mutual funds purchased in her account in 1999 and 2000 is clearly erroneous and false. Her investment objective was growth and that she was interested in investing the equity portion of her portfolio through Claimant. She had no liquidity needs and her investment time horizon was 15-20 years. Claimant made various investment recommendations, including bank certificates of deposit, equity, and fixed income mutual funds. He explained all details of his recommendations to Customer P, including all costs, fees, risks, terms, advantages, and disadvantages.

In 1999 and 2000, Customer P authorized the purchase of recommended technology stocks and mutual funds which ultimately constituted 25% of the Customer's portfolio. Between 2000 and 2002, due to the market downturn, Customer P's technology equities declined in value. The Customer filed an arbitration claiming the technology stocks were unsuitable. The claim was settled and Claimant did not contribute.

The suitability of an investment is determined at the time when an investment is made. A subsequent diminution in value is no indication of the suitability of an investment. No future result, especially the dramatic market downturn, can or does retroactively render an investment unsuitable. Claimant's recommendations to Customer P were based on information provided by Customer P to Claimant regarding her investor profile.

**Occurrence Number 1183059**

Customer D's claim of failure to follow instructions is clearly erroneous and false. The claim rose out of a simple misunderstanding on the part of Customer D. The instructions that she alleged were not followed were, in fact, followed as directed. Customer D mistook an old statement for a current statement and erroneously concluded that her securities had not been sold.

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

Member Surcharge = \$ 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 with a single Arbitrator @ \$50.00/session = \$ 50.00  
Pre-Hearing Conference: October 16, 2020 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00  
Hearing: February 23, 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**

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

**03/05/2021**

Signature Date

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.

March 05, 2021

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