

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
David Bishop Smith

Case Number: 20-02064

vs.

Respondent
Morgan Stanley DW, Inc.

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

REPRESENTATION OF PARTIES

For Claimant David Bishop Smith: Benjamin Winograd and Dochter Kennedy, MBA, J.D., AdvisorLaw LLC, Westminster, Colorado.

For Respondent Morgan Stanley DW, Inc.: Jeff Palmer, Esq., Greenberg Traurig, LLP, East Palo Alto, California.

CASE INFORMATION

Statement of Claim filed on or about: June 30, 2020.

David Bishop Smith signed the Submission Agreement: June 30, 2020.

Statement of Answer filed by Respondent on or about: September 4, 2020.

Morgan Stanley DW, Inc. signed the Submission Agreement: September 17, 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 stated that it does not oppose Claimant’s request for expungement, but denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Numbers 784662 and 1322921 from his CRD records; compensatory damages in the amount of \$1.00 from Respondent; and any and all other relief deemed just and equitable.

In the Statement of Answer, Respondent requested: denial of Claimant's request for an award of damages from Respondent in its entirety; that Claimant take nothing from Respondent by reason of the Statement of Claim; and any other relief deemed appropriate.

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 26, 2021, Claimant filed an Affidavit of Service reflecting that the customers in Occurrence Numbers 1322921 and 784662 ("Customers") were served on January 21, 2021, with the Statement of Claim and notice of the date and time of the expungement hearing, as well as of their right to participate therein.

The Customers in Occurrence Number 1322921 are husband and wife. On February 22, 2021, the husband ("Customer-husband") contacted FINRA to advise of his intent to participate in the hearing.

On March 1, the Customer-husband in Occurrence Number 1322921 made a written submission objecting to Claimant's expungement request.

The Customer in Occurrence number 784662 did not respond to Claimant's notice of the expungement hearing.

The Arbitrator conducted a recorded, telephonic hearing on March 3, 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-husband in connection with Occurrence Number 1322921 participated in the hearing and objected to the expungement request on the grounds that Claimant failed to present him with a strategy to hedge his large holding in one security. However, the stock at issue had very onerous trading restrictions and Claimant recommended to the Customer-husband that he sell as much of that position as he could, but the Customer-husband declined to do so.

The Customer in connection with Occurrence Number 784662 did not participate in the expungement hearing.

The Arbitrator found that all of 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 Number 784662, considered the amount of payment 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 not contribute to the settlement amount.

On February 11, 2021, Claimant submitted correspondence representing that he was unable to produce the settlement agreement in connection with Occurrence Number 1322921 because Respondent confirmed in writing that it does not have a copy of it. During the hearing, Claimant and the Customer-husband addressed the terms of the settlement agreement in their testimony, which the Arbitrator deemed to be sufficient. The Arbitrator determined that no further steps were required in this regard.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's credible testimony and Claimant's Expungement Hearing Exhibits 1 through 19.

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 Numbers 784662 and 1322921 from registration records maintained by the CRD for Claimant David Bishop Smith (CRD Number 2033396) with the understanding that, pursuant to Notice to Members 04-16, Claimant David Bishop Smith 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 finding of fact with respect to Occurrence Numbers 784662 and 1322921:

The claim, allegation, or information is false.

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

Occurrence Number 784662

The evidence showed that the Customer was an experienced investor with an aggressive investment profile. The evidence also showed that Claimant discussed all trades with the

Customer and obtained the Customer's approval for each one. Only one of the Customer's investments made through Claimant lost value and the evidence demonstrated that it was a suitable investment for Claimant because it was in a publicly-traded satellite manufacturing company highly recommended by Claimant's firm's research department and was a relatively conservative investment for a client with an aggressive investment strategy. Although the Customer was upset that the one stock lost value, the Claimant engaged in no improper sales practice. Thus, the Customer's allegations against Claimant are false.

Occurrence Number 1322921

The evidence showed that the Customers were sophisticated investors with an aggressive investment profile. The evidence also showed that Claimant discussed each trade with the Customers and that the Customers approved each and every one. The Customers had a large position in one stock, not recommended by Claimant, which had substantial trading restrictions. The evidence demonstrated that Claimant notified the Customers whenever it was possible to sell off a portion of that large holding and recommended that the Customers do so, but the Customers decided to hold onto most of that holding. When the company in which the Customers had the large position declared bankruptcy, the Customers suffered significant losses and brought a complaint against Claimant. The Customers were unhappy about sustaining this loss, but the evidence showed that Claimant did not engage in any improper sales practice. Thus, the allegations against Claimant are false.

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

**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

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 23, 2020 1 session

One (1) hearing session on expungement request @ \$50.00/session	=\$ 50.00
Hearing: March 3, 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

John F. Duane

-

Sole 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.

Arbitrator's Signature

John F. Duane

John F. Duane
Sole Public Arbitrator

03/08/2021

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 08, 2021

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