

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Ying Zhang

Case Number: 20-02646

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 Ying Zhang (“Claimant”): Benjamin Winograd, Esq., HLBS Law, Westminster, Colorado.

For Respondent Morgan Stanley & Co., LLC (“Respondent”): Patrick Mulligan, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: August 18, 2020.
Amended Statement of Claim filed on or about: September 24, 2020.
Claimant signed the Submission Agreement: August 17, 2020.

Statement of Answer filed on or about: October 8, 2020.
Respondent signed the Submission Agreement: October 8, 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 1404639 from Claimant's CRD records pursuant to FINRA Rule 2080, as:
 - a. the claim, allegation, or information is factually impossible or clearly erroneous; and/or
 - b. Claimant was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and/or
 - c. the claim, allegation, or information is false.
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 Amended Statement of Claim, Claimant requested:

1. Expungement of Occurrence Number 1404639, from her 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 1404639, from her 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 1404639;
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:

1. Claimant's request for \$1.00 in compensatory damages be denied; and
2. Any and all forum fees for this matter be assessed against Claimant.

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 May 10, 2021, Claimant advised that the customer in Occurrence Number 1404639 ("Customer") was served with the Statement of Claim and notice of the date and time of the expungement hearing. On May 17, 2021, 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 June 16, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent did not participate in the expungement hearing.

The Customer also did not participate in the expungement hearing. 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 noted that there was no individual settlement agreement related to Occurrence Number 1404639 as the complaint was related to the illiquidity of the Customer's Auction Rate Securities ("ARS") and the complaint was resolved as part of a global settlement between Respondent and securities regulators. The parties were not able to produce the global settlement agreement and, therefore, there were no settlement documents to review. Based on the review of Claimant's BrokerCheck® Report and Claimant's testimony, the Arbitrator noted that Claimant was not involved in the global settlement agreement and did not contribute to the settlement amount, which was a repurchase of the ARS at par value. The Arbitrator also noted that the settlement was not conditioned on any party to the settlement not opposing the request for expungement.

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

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 Number 1404639 from registration records maintained by the CRD for Claimant Ying Zhang (CRD Number 2158046) with the understanding that, pursuant to Notice to Members 04-16, Claimant Ying Zhang 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:

In September of 2007, the Customer became a client of Claimant. Claimant inherited the Customer's account when his previous financial advisor ended his employment with Respondent. Claimant received no compensation from her association with the Customer.

Claimant's manager was eager to retain the Customer's business and recommended an ARS. Claimant and her manager explained to the Customer in detail the terms, risks, costs, fees, advantages and disadvantages of the ARS, including the risks of illiquidity. The Customer also received the ARS marketing brochure, which further explained the details of the ARS, including the risk of illiquidity. The Customer liked the higher interest rates of the ARS and in December 2007, he signed documents purchasing the ARS, in which he affirmed his understanding of their illiquidity.

In February 2008, auctions for the ARS began to fail. The four largest banks that market said securities declined to act as bidders of last resort. The failed auctions resulted in the supply of the ARS for sale exceeding demand. Respondent reached an agreement with certain of its regulators pursuant to which it would repurchase the ARS for their full par value from certain of its clients, including the Customer. On July 7, 2009, Respondent settled with the Customer by repurchasing the Customer's ARS at par value, pursuant to the requirements of FINRA Regulatory Notice 9-12.

Claimant did not contribute to the cost of repurchasing the ARS, nor did she receive, review or sign the settlement agreement. Respondent found that Claimant did not cause, contribute to or have any control whatsoever over the market-caused events that led to the illiquidity of the Customer's ARS.

The allegation of misrepresentation is false because both Claimant and her manager explained in detail the terms, risks, costs, fees, advantages, and disadvantages of the ARS, including the risk of illiquidity.

The allegation of misrepresentation is clearly erroneous because the dispute did not arise out of any alleged misrepresentation on the part of Claimant, but rather market-caused events that led to the illiquidity of the ARS. The Customer made an independent decision to accept the risk of investing in the ARS for the opportunity to receive a higher interest rate.

Respondent takes no position regarding Claimant's request for expungement.

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 event giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge = \$ 150.00

Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

May 12, 2021, postponement requested by Claimant = \$ WAIVED

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: January 13, 2021 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing: June 16, 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

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

06/29/2021

Signature Date

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June 30, 2021

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