Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Robert Andrew Dunn

vs.

Respondent
Morgan Stanley & Co., LLC

Case Number: 20-02708

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 Robert Andrew Dunn: Dochtor Kennedy, MBA, J.D., and Zachary Morse, J.D. AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Morgan Stanley & Co., LLC: Joseph A. Sack, Esq. and Jeremy Weiner, Esq., Morgan Stanley & Co., LLC, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: August 20, 2020.
Amended Statement of Claim filed on or about: November 10, 2020.
Robert Andrew Dunn signed the Submission Agreement: August 20, 2020.

Statement of Answer filed by Respondent on or about: August 28, 2020.
Morgan Stanley & Co., LLC signed the Submission Agreement: August 28, 2020.

CASE SUMMARY

In the Statement of Claim and Amended 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 and denied the allegations made in the Statement of Claim.

RELIEF REQUESTED

In the Statement of Claim and Amended Statement of Claim, Claimant requested: expungement of Occurrence Numbers 1184037, 1194447 and 1427956; compensatory damages in the amount of $1.00 from Respondent; and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent denied that it is liable to Claimant for any damages whatsoever.

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 February 15, 2021, Claimant filed an Affidavit confirming that the customers in Occurrence Numbers 1184037 and 1427956 were served with the Statement of Claim and notice of the date and time of the expungement hearing. On February 15, 2021, Claimant advised that a public records search of the customer in Occurrence Number 1194447 revealed that the customer is deceased. Therefore, the customer could not be served. However, Claimant filed an Affidavit on February 15, 2021 confirming that the administrator of the customer's estate in Occurrence Number 1194447 was served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted recorded, telephonic hearings on September 14 and 17, 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 customers also 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 Number 1184037, 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 contributed to the settlement amount. The Arbitrator noted that Claimant's contribution was his fees on the transaction and that expungement is still appropriate.

The Arbitrator was unable to review the settlement document related to Occurrence Number 1427956. Due to the age of the underlying Occurrence, no customer records or the actual Settlement Agreement disposing of the claim were available. Based on Claimant's testimony and his BrokerCheck® Report, 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.

The Arbitrator noted that the dispute related to Occurrence Number 1194447 was not settled and, therefore, there was no settlement documents to review.

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

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 1184037 from registration records maintained by the CRD for Claimant Robert Andrew Dunn (CRD Number 2753628) with the understanding that, pursuant to Notice to Members 04-16, Claimant Robert Andrew Dunn 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; and the claim, allegation, or information is false.

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

   > The customer filed a claim for damages in the amount of $4,700,000.00. The case was settled for $842,000.00 with Claimant paying $125,000.00 toward the settlement. Claimant testified the amount he paid as part of the settlement reflects the amount of fees and commission Claimant was paid on this account. This matter was settled by Respondent to avoid the uncertainty and costs of litigation. Respondent agreed to settle without admitting liability and without a hearing. Claimant had no input in the settlement amount. The allegation in this matter was that the security was unsuitable and there was churning in the account from June 1998 through late 2003.
   >
   > This accusation is without merit. It is true that the customer was overconcentrated in EMC however the cause of the overconcentration was the customer's refusal time after time to heed the advice of Respondent and Claimant. The customer had an emotional attachment to EMC because of the sale of her company. The customer received over 120,000 pre-split shares of EMC valued at approximately $5,400,000.00. EMC was a very hot tech stock which also had the volatility associated with the market for tech

stocks. Respondent created a hedging strategy that would protect the concentrated EMC stock from a decline and protect the customer's assets as she refused to sell all but 5% of her shares. The testimony shows that the decline in value of the security was due to the customer not taking Claimant's recommendations. The customer was advised to sell at numerous junctions during the relationship and sales at those time would have generated great gains. The customer was also advised to hedge her stocks, but she wanted to keep the security till it went back to the higher amounts the stock had sold for previously. Claimant and his team had many meetings with the customer and he even made two trips to visit her to advise her that she needed to diversify. Additionally, this was a non-discretionary account, so any action taken on this account required the customer's approval which she refused to give. When Claimant tried to advise the customer, the customer ignored his advice and suffered a loss of value in the stock. EMC over the long term has proved to be a valuable security however, the customer was absolutely overweighted in the security in a very volatile market. The customer whose background was in the technology field also invested in other technology stocks at the time they were very volatile. The Arbitrator finds, based upon the evidence and Claimant's persuasive testimony, that the allegations are in fact false, misleading and do not in any way protect the buying public from an unscrupulous broker. Claimant provided proper guidance to the customer in accordance with the customer's investment goals.

2. The Arbitrator recommends the expungement of all references to Occurrence Number 1194447 from registration records maintained by the CRD for Claimant Robert Andrew Dunn (CRD Number 2753628) with the understanding that, pursuant to Notice to Members 04-16, Claimant Robert Andrew Dunn 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; and the claim, allegation, or information is false.

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

   The customer was a venture capitalist who was the chairman and CEO of a large corporation with over 30 years of investment experience. The customer's annual income was $1 million, liquid net worth was more than $20 million and total net worth was more than $100 million. The customer had no liquidity needs and investment time horizon was long-term. The customer took $4 million and opened a non-discretionary brokerage account with Claimant. The customer actively engaged in the trade of technology related stocks. Although Claimant made some recommendations, the decisions on which stocks to buy were those of the customer. Claimant explained all the risks, terms, advantages, disadvantages, and fees associated with the stocks. The decrease in value of the account was due to the extreme volatility of the market in 2000 and 2001. The holdings in

the account were always discussed with the customer and the customer authorized all the activity in the account. The investments were suitable for the customer at the time they were made, and all purchases were directed and authorized by the customer. Additionally, the account represented less than 4% of the customer's assets. After the complaint was filed, Respondent investigated the complaint and denied the complaint finding nothing improper in the handling of the account. Claimant filed an arbitration which did not name the Claimant. The allegation of churning is false as the account was directed by the customer as is the allegation of unsuitability. Claimant had a reasonable basis to believe his recommendations were suitable at the time they were made based on the customer's investor profile and the sophistication of the investor. Regardless, the account was not a discretionary account and the decisions in the account were made by the customer. Based upon the documents entered into the record and the testimony of the Claimant, the Arbitrator finds that Claimant made suitable recommendations, did not engage in churning, and performed his obligations to the customer in a professional manner.

3. The Arbitrator recommends the expungement of all references to Occurrence Number 1427956 from registration records maintained by the CRD for Claimant Robert Andrew Dunn (CRD Number 2753628) with the understanding that, pursuant to Notice to Members 04-16, Claimant Robert Andrew Dunn 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; and the claim, allegation, or information is false.

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

   The customer was probably one of the most sophisticated individuals involved in the finance industry. The customer is the founder and CEO of a $1 billion venture capital firm. The customer is highly educated with advanced graduate degrees in from reputable universities. The customer had over 5 years' experience as an options trader who was approved for the highest level of option trading by Respondent. The customer had an annual income of more than $1 million and a net worth of more than $90 million. The customer's investment objective was long-term growth with aggressive risk tolerance. The customer had no liquidity needs and his investment time horizon was long term. The customer was involved in options. In most of his account portfolio, he had conservative equity and fixed income accounts (which were also managed by the Claimant) however, the account at issue is the account that he used for what was called the S strategy. The customer approved all the transitions in the portfolio verbally and by email. Because of the success of the S strategy, the portfolio had gained approximately $1 million in value in 2006. During 2007 and 2008, the customer expanded his option strategy to include selling puts and calls. Although 2007 was not a good year and the portfolio declined in

value, along with the rest of the stock market, the customer decided that in 2008 he would be more aggressive and attempt to make back all the money he lost in 2007. The customer's strategy worked for a while. His portfolio increased 1% that year during a time when the S&P declined by 15%. At all times, Claimant advised the customer that the market was very volatile and questioned his aggressive strategy. In late September 2008, Claimant had dinner with the customer to discuss the rapid recent decline in the market, the recent bankruptcy by Lehman Brothers, and the customer's concerns about the stability of the financial industry. The customer gambled that the market would quickly recover. It did not. As a result of the 2008 financial crisis, the value of the customer's equity and options portfolios declined in value along with the rest of the market. In October 2008, Claimant left Respondent and registered with another firm. The customer was initially going to follow Claimant but after the government bail out of the financial industry, the customer decided to keep his account with Respondent. After Claimant left Respondent, the customer filed a complaint and sought damages of $24 million. Claimant was not involved in the settlement and did not contribute to the $6.5 million settlement. It is interesting to note that despite the amount Respondent paid out in the settlement, it still attempted to rehire Claimant. Given the tremendous cost and risk of the litigation, a settlement would be a logical business decision. The customer kept his personal assets at Respondent, and he has kept the much larger corporation and assets under his influence or control at Respondent. Based on the facts presented, the Arbitrator finds that Claimant did not mismanage the customer driven non-discretionary account and that Claimant satisfies FINRA Rule 2080(b) (1) (A) and (C) in that the charges of mismanagement of the account is clearly erroneous and false.

4. 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 firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent Morgan Stanley & Co., LLC 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:	January 15, 2021	1 session		
Two (2) hearing sessions on expungement request @ $50.00/session			=$	100.00
Hearings:	September 14, 2021	1 session		
	September 19, 2021	1 session		
Total Hearing Session Fees			=$	150.00

The Arbitrator has assessed $100.00 of the hearing session fees to Claimant.

The Arbitrator has waived the $50.00 hearing session fees for the September 14, 2021 hearing.

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

ARBITRATOR

Linda J. Baer - 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

Linda J. Baer **10/04/2021**

Linda J. Baer
Sole Public Arbitrator

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.

October 04, 2021
Date of Service (For FINRA Dispute Resolution Services use only)