

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Norman Thorn Robertson

Case Number: 20-02721

vs.

Respondent

Morgan Stanley

Hearing Site: Los Angeles, 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 Norman Thorn Robertson (“Claimant”): Frances Menzer, Esq., HLBS Law, Westminster, Colorado.

For Respondent Morgan Stanley (“Respondent”): Jeffrey P. Palmer, Esq., Greenberg Traurig, LLP, East Palo Alto, California.

CASE INFORMATION

Statement of Claim filed on or about: August 20, 2020.

Amended Statement of Claim filed on or about: September 25, 2020.

Claimant signed the Submission Agreement: August 20, 2020.

Statement of Answer filed by Respondent on or about: October 23, 2020.

Respondent signed the Submission Agreement: October 15, 2020.

CASE SUMMARY

In the Statement of Claim and the 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 denied the allegations made in the Amended Statement of Claim, asserted various affirmative defenses, and did not oppose Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of Occurrence Number 5582 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 5582 from Claimant's 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 5582 from Claimant's 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 5582;
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 award of damages from Respondent be denied in its entirety;
2. Claimant take nothing from Respondent by reason of the Amended Statement of Claim; and
3. Whatever relief the Arbitrator may deem 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 March 16, 2021, Claimant advised that the customer in Occurrence Number 5582 ("Customer") was served with the Statement of Claim and notice of the date and time of the expungement hearing. On March 22, 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 April 28, 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 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 related to Occurrence Number 5582, 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 also noted that expungement is still appropriate as Claimant contributed to the settlement to minimize the costs involved in defending himself and avoid litigation costs.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: pleadings; Claimant's BrokerCheck® Report; the release agreement with the Customer; notification and proof of service of notice to the Customer; and Claimant's testimony.

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 5582 from registration records maintained by the CRD for Claimant Norman Thorn Robertson (CRD Number 1121726) with the understanding that, pursuant to Notice to Members 04-16, Claimant Norman Thorn Robertson 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:

The claim, allegation, or information is factually impossible or clearly erroneous.

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

The Customer filed a complaint against Claimant for an alleged fraudulent act. The Customer was not a customer of Claimant and Claimant indicated through oral testimony that he never met the Customer. Claimant signed a letter indicating that one of his customers, Mr. D, had a certain balance in his account with Claimant. The account was established to deposit funds from the sale of a property owned by Mr. D to purchase a property owned by the Customer. Although the deposit did occur, the deposit was delayed due to issues with the closing of the escrow. Claimant was not a party or involved in the real estate transactions and, according to his testimony, he was merely

attempting to assist Mr. D to comply with a request from his lender. The Customer did not participate at the evidentiary hearing and did not provide any testimony orally or in writing. The complaint was filed in 1993. According to testimony from Claimant, it was his understanding that the purchase of the Customer's property was ultimately completed sometime in 1991. Claimant also testified that after the property was bought by Mr. D, a dispute occurred between Mr. D and the Customer. Claimant indicated he was not involved in this dispute, but the Customer filed a complaint against him during the time of the dispute.

Although Claimant admits he signed the letter indicating an inaccurate average balance of funds in Mr. D's account knowing that the funds from the sale of the property had not yet occurred, he indicated that he did not intend to defraud the Customer. Claimant indicated he was not involved in the real estate transaction, did not financially gain or benefit, and had no business relationship with Mr. D other than the account.

The Arbitrator concluded that although the Customer had a valid issue with the letter signed by Claimant indicating an inaccurate average balance of funds in Mr. D's account, no evidence was provided to sustain the allegation that this was done in an attempt to defraud Customer.

It is the opinion of the Arbitrator that this allegation is clearly erroneous and meets FINRA Rule 2080(b)(1)(A).

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
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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
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Pre-Hearing Conference: February 4, 2021	1 session		
One (1) hearing session on expungement request @ \$50.00/session		= \$	50.00
Hearing: April 28, 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

George L. Tindall

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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

George L. Tindall

George L. Tindall
Sole Public Arbitrator

05/13/2021

Signature Date

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May 14, 2021

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