

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Thomas John O'Rourke, Jr.

Case Number: 20-02757

vs.

Respondent

Morgan Stanley DW Inc.

Hearing Site: Wilmington, Delaware

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 Thomas John O'Rourke, Jr.: Dochter Kennedy, MBA, J.D. and Michael O'Gara, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Morgan Stanley DW Inc.: Alejandro Schwed, Esq., Morgan Stanley, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: August 24, 2020.

Thomas John O'Rourke Jr. signed the Submission Agreement: August 24, 2020.

Statement of Answer filed by Respondent on or about: December 9, 2020.

Respondent did not sign the Submission Agreement.

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 did not oppose Claimant's expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Number 1309236; 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 did not set forth a specific relief request.

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.

Respondent did not file a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and having answered the claim, appeared, and testified at the hearing, is bound by the determination of the Arbitrator on all issues submitted.

On March 11, 2021, Claimant advised that a public records search of the customers in Occurrence Number 1309236 revealed that one of the customers passed away on March 16, 2011. Therefore, the customer could not be served with the Statement of Claim and notice of the date and time of the expungement hearing.

On March 11, 2021, Claimant also advised that the remaining customer in Occurrence Number 1309236 was served with the Statement of Claim and notice of the date and time of the expungement hearing. On March 15, 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 May 18, 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 1309236, 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.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's BrokerCheck® Report, the pleadings, Claimant's testimony, and the 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 1309236 from registration records maintained by the CRD for Claimant Thomas John O'Rourke, Jr. (CRD Number 2764727) with the understanding that, pursuant to Notice to Members 04-16, Claimant Thomas John O'Rourke, Jr. 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:

In 2000, the customers became clients of the Claimant. Their objective was growth with a long-term perspective. Originally, they wanted to invest \$100,000.00 in an all-equity portfolio, but after discussing their options with the Claimant, agreed to a well-diversified portfolio of stock and bonds, mutual funds, CDs, and equities. Due to market conditions, their portfolio slightly declined in value and over time they ceased communicating with Claimant. They transferred their account in 2004. In 2006, they contacted the firm, alleging unsuitability. The firm settled the matter to avoid the cost and risk of defense. This occurrence should be expunged on the ground that it is clearly erroneous, false or both. Claimant's recommendations were suitable for the customers given their interests and risk parameters and were approved by them. The interests of consumer protection and awareness being in no way negatively implicated, this occurrence should be expunged.

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 that employed the associated person at the time of the event giving rise to the dispute. Accordingly, as a party, Respondent Morgan Stanley DW, Inc. 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 4, 2021 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing: May 18, 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

Robert E. Anderson

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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

Robert E. Anderson

Robert E. Anderson
Sole Public Arbitrator

05/21/2021

Signature Date

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May 21, 2021

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