

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Brannan Paul Vaughan

Case Number: 20-02810

vs.

Respondent
Morgan Stanley DW Inc.

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 Brannan Paul Vaughan (“Claimant”): Benjamin Winograd, Esq., HLBS Law, Westminster, Colorado.

For Respondent Morgan Stanley DW Inc. (“Respondent”): Simon M. Levy, Esq., Keesal, Young & Logan, San Francisco, California.

CASE INFORMATION

Statement of Claim filed on or about: August 26, 2020.
Claimant signed the Submission Agreement: August 26, 2020.

Statement of Answer filed by Respondent on or about: October 21, 2020.
Respondent signed the Submission Agreement: October 14, 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 did not oppose Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of Occurrence Number 1298068 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 1298068 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 1298068;
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 compensatory damages in the amount of \$1.00 be denied.

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 11, 2021, Claimant advised that the customer in Occurrence Number 1298068 ("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 July 30, 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 was unable to review the settlement documentation related to Occurrence Number 1298068. The Arbitrator noted that according to Respondent's counsel, the settlement documents could not be located, and that Claimant did not participate in the settlement in any way and did not contribute to the settlement amount. The Arbitrator found that the parties made sufficient efforts to locate the settlement documentation.

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

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 1298068 from registration records maintained by the CRD for Claimant Brannan Paul Vaughan (CRD Number 2634450) with the understanding that, pursuant to Notice to Members 04-16, Claimant Brannan Paul Vaughan 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 registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

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

In 1996, the Customer purchased the underlying investment, Harvard Annuity with the assistance of his previous broker. Claimant had no involvement with the Customer until 2005 when Claimant inherited the previous broker's book of business. Respondent's documents relating to the Customer erroneously mis-stated the cost basis of the Harvard Annuity investment; these documents were the source of Claimant's information regarding the cost basis of the investment. When asked by Claimant regarding the source of the funds for the Harvard Annuity, the Customer responded "savings and accumulated savings".

When Claimant and the Customer decided to withdraw funds from the Annuity, Claimant had not been advised that the 1996 purchase involved a 1035 exchange with a much lower cost basis. Consequently, Claimant did not advise the Customer of additional taxes that would result from the withdrawal. Respondent acknowledged the error and settled with the Customer. The Customer stated to counsel for Claimant that he had no interest in opposing the expungement and did not appear at the hearing to object to the expungement request.

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: January 4, 2021 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing: July 30, 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

Mary Margaret Bush

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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

Mary Margaret Bush

Mary Margaret Bush
Sole Public Arbitrator

08/09/2021

Signature Date

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August 09, 2021

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