

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimant  
Brian Robinson

Case Number: 20-02855

vs.

Respondent  
Morgan Stanley & Co., LLC

Hearing Site: Tampa, Florida

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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

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimant Brian Robinson (“Claimant”): Jonathan C. Schwartz, Esq., Schwartz Legal, PLLC, Plantation, Florida.

For Respondent Morgan Stanley & Co., LLC (“Respondent”): Trae D. Meyr, Esq., Morgan Stanley, St. Petersburg, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: August 31, 2020.  
Claimant signed the Submission Agreement: August 28, 2020.

Statement of Answer filed on or about: October 20, 2020.  
Respondent signed the Submission Agreement: September 9, 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 and denied any wrongdoing.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers 1418530, 1359864, 1289755, and 790917 and compensatory damages in the amount of \$1.00.

In the Statement of Answer, Respondent requested that Claimant's request for compensatory damages in the amount of \$1.00 be denied and that all forum fees for this matter be assessed against Claimant.

At the hearing, Claimant withdrew the request for \$1.00 in compensatory damages.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

On March 11, 2021, Claimant advised that the customers in Occurrence Numbers 1418530, 1359864, 1289755, and 790917 (each a "Customer" and, collectively, "Customers") were served with the Statement of Claim and notice of the date and time of the expungement hearing ("Notices"). Claimant also filed copies of the UPS proof-of-delivery for the Notices sent to the Customers in Occurrence Numbers 1359864, 1289755, and 790917 and a copy of the email sent to the Customers in Occurrence Numbers 1418530.

The Arbitrator conducted a recorded hearing by videoconference on April 7, 2021 and a recorded, telephonic hearing on May 12, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearings and, as stated in the Statement of Answer, took no position on the request for expungement.

The Customers did not participate in the expungement hearings. The Arbitrator found that the Customers had notice of the expungement request and May 12, 2021 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 1289755, 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.

The Arbitrator noted that the disputes related to Occurrence Numbers 1418530, 1359864, and 790917 were not settled and, therefore, there was no settlement documentation to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's testimony; settlement agreement in Occurrence Number 1289755; Declaration of Claimant; Declaration of Claimant's Assistant; Claimant's memorandum to Respondent's Branch Manager dated March 12, 2000; Respondent Branch Manager's letter to

Florida Comptroller, Bates Nos. 102-103; and documents with Bates Nos. 85, 87, 88, 89, 91, 93, 95, 97, 99, 108, 115, 124, 131, 132, 135 and 153.

### **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:

The Arbitrator recommends the expungement of all references to Occurrence Numbers 1418530, 1359864, 1289755, and 790917 from registration records maintained by the CRD for Claimant Brian Jeffrey Robinson (CRD Number 1801251) with the understanding that, pursuant to Notice to Members 04-16, Claimant Brian Jeffrey Robinson 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 for Occurrence Numbers 1418530, 1359864, and 790917:

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:

#### Occurrence Number 1418530

The Customers did not express concern – or question any trade – until one of the Customers complained that, three years before, she had wanted to invest in certificates of deposit. However, Claimant and his staff had approximately 150 contacts with the two Customers over those three years, including face-to-face meetings, monthly statements, trade confirmations, periodic comprehensive reviews, and telephone calls. Further, during the 2007-2008 market meltdown, when major indices dropped as much as 60%, the Customers' account dropped only 20%. Claimant's recommendations were suitable, and there was no inappropriate conduct. The Customers had many opportunities over three years to question any transaction, which they failed to do.

#### Occurrence Number 1359864

According to Claimant's testimony, supported by his affidavit, he never advised the Customer that she did not have to take required minimum distributions (RMDs) from her inherited IRA. Claimant had a “general conversation” about IRAs with the Customer but did not address specifics or tax aspects of her particular IRA. He informed the Customer that she could either take the annual required minimum distributions or withdraw the entire balance of the IRA before the fifth anniversary

of her mother's passing. Claimant instructed her to speak to a tax advisor. The Customer indicated her understanding of IRA withdrawal options and, in March 2004, stated, "I don't think I will be needing a distribution from the IRA at this time." Further, the Customer's purchase of an annuity did not prevent her from paying the RMD, as she had a significant sum available to fund a distribution and she could access the annuity's proceeds in four years. Despite her claimed unhappiness, the customer did not pursue her claim further after Respondent investigated and denied her complaint.

Occurrence Number 790917

On February 2, 2000, the Customer told Claimant that a brokerage firm ("Firm") wanted her to liquidate a fund held by Respondent instead of transferring it "in kind." Claimant advised her that a contingent deferred sales charge of approximately \$3,900.00 would apply, as the fund was purchased only eight months before. The Customer said she was uncertain how to proceed, would consider this news, would talk to the Firm, and would call Claimant back. She did not direct the fund to be liquidated at that time. The Customer next called Claimant on February 18, 2000. In that conversation, she still made no decision, but, later that day, she called Claimant's supervisor and complained that she wanted the fund sold at the higher February 2<sup>nd</sup> price. The supervisor offered to sell the fund at the February 18<sup>th</sup> price and then investigate her allegations. Even then, she made no decision and said, "I'll call back." Thus, over three conversations with two different people, she did not order liquidation of the fund. She finally sold the fund on February 29<sup>th</sup>. Claimant had no incentive, gain, or reason to ignore the Customer's alleged order to sell, as the account was already being moved to the Firm and he might have earned a commission by selling. Although indicating unhappiness with the delay, the Customer later confirmed Claimant's version of events. Respondent investigated and denied her claim. The Customer did not take any further action.

Pursuant to Rule 13805 of the Code, the Arbitrator has made the following Rule 2080 affirmative finding of fact:

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 finding based on the following reasons:

Occurrence Number 1289755

Claimant's uncontroverted testimony and documentary evidence, including Claimant's affidavit and exhibits, overwhelmingly reflect that Claimant was not involved in servicing the Customer's account. Claimant was asked to accompany another advisor to a meeting with the Customer, but he did not play an active role during that meeting. Subsequently, Claimant had nothing to do with the Customer or her account. Claimant did not perform research, recommend investments, collect commissions, or interact with the Customer. The exhibits clearly showed that Claimant was not the Customer's advisor.

## 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(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
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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 @ \$50.00/session	=\$ 50.00
Pre-Hearing Conference: December 23, 2020	1 session

Two (2) hearing sessions on expungement request @ \$50.00/session	=\$ 100.00
Hearings: April 7, 2021	1 session
May 12, 2021	1 session

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Total Hearing Session Fees	=\$ 150.00
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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**

Karl A. Vogeler, III

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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**

***Karl A. Vogeler, III***

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Karl A. Vogeler, III  
Sole Public Arbitrator

**06/01/2021**

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Signature Date

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June 01, 2021

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