

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Peter Anthony Nicoletti

Case Number: 20-03037

vs.

Respondents
Morgan Stanley & Co., LLC
Wells Fargo Clearing Services, LLC

Hearing Site: Boca Raton, Florida

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. Members

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Peter Anthony Nicoletti: Jonathan C. Schwartz, Esq., Schwartz Legal, PLLC, Plantation, Florida.

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

For Respondent Wells Fargo Clearing Services, LLC (“WFCS”): Patricia E. Cowart, Esq., Wells Fargo Legal Department, Saint Louis, Missouri.

CASE INFORMATION

Statement of Claim filed on or about: September 8, 2020.

Peter Anthony Nicoletti signed the Submission Agreement: September 8, 2020.

Statement of Answer filed by Respondent MSCO on or about: October 27, 2020.

MSCO signed the Submission Agreement: September 9, 2020.

Statement of Answer filed by Respondent WFCS on or about: October 27, 2020.

WFCS signed the Submission Agreement: October 28, 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 their respective Statements of Answer, Respondents MSCO and WFCS took no position on Claimant’s expungement request and denied any allegations of wrongdoing made in the Statement of Claim.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers 1673061, 1409146 and 1313804, and compensatory damages in the amount of \$1.00 from Respondents MSCO and WFCS.

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

In the Statement of Answer, Respondent WFCS did not delineate a specific relief request.

At the hearing, Claimant withdrew the request for \$1.00 in damages against each Respondent.

OTHER ISSUES CONSIDERED AND DECIDED

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

On April 23, 2021, Claimant advised that the customers in Occurrence Numbers 1673061 (“Customers A and B”) and 1409146 (“Customer C”) were served with the Statement of Claim and notice of the date and time of the expungement hearing. Claimant also advised that the customer for Occurrence Number 1313804 (“Customer D”) had passed away. Therefore, the Arbitrator found that Claimant was unable to serve Customer D.

The Arbitrator conducted a recorded hearing by videoconference on May 14, 2021, so the parties could present oral argument and evidence on Claimant’s request for expungement.

Respondents MSCO and WFCS participated in the expungement hearing and, as stated in the Statement of Answer, took no position on the request for expungement.

Customers A, B and C did not participate in the expungement hearing. The Arbitrator found that Customer A, B and C 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 reviewed the settlement documentation related to Occurrence Number 1313804, 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 1673061 and 1409146 were not settled and, therefore, there were no settlement documents to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the Declaration filed by Claimant and the attachments thereto, including emails, a settlement agreement, contact notes, account applications, correspondence, mortgages and pleadings. Claimant's testimony was credible and was consistent with the documentary evidence.

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 Numbers 1673061, 1409146 and 1313804 from registration records maintained by the CRD for Claimant Peter Anthony Nicoletti (CRD Number 4132229) with the understanding that, pursuant to Notice to Members 04-16, Claimant 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 respective Rule 2080 affirmative findings of fact as to each occurrence:

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; and

The claim, allegation, or information is false.

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

As to Occurrence Number 1673061:

The documents and the unrebutted testimony of Claimant established that Customers A and B were informed of the risks and understood them. Further, virtually all the losses that occurred were from investments that were not recommended by Claimant. Claimant asserts that Customers A and B did not actually intend to file a complaint. The email does appear to demand treatment as one by Respondent. Unfortunately, Customers A and B did not respond to requests to testify. However, even assuming arguendo that the customers did intend to file a complaint, the allegations are clearly erroneous and false.

As to Occurrence Number 1409146:

The evidence established that the claim was false and clearly erroneous. The complaint itself was so rife with internal inconsistencies as to collapse of its own weight. In addition, the credible testimony of Claimant supports a finding that the subject annuities were entirely suitable. The documents suggest that Customer C received disclosures for annuities on at least two occasions. While the evidence was not clear that, as suggested by Claimant, the complaint was driven by a later financial advisor's frustration with being unable to make commissions due to the portfolio being largely in annuities subject to early withdrawal penalties, the evidence was clear that the claim was false, factually impossible and clearly erroneous.

As to Occurrence Number 1313804:

The evidence established that Customer D's losses were due to some mixture of her own lack of diligence, the decisions made by the issuer of the annuity Customer D intended to purchase, and operational delays that may have been the fault of Morgan Stanley. The evidence established that there was no sales practice violation and that Claimant did all he could to expedite the transaction so that Customer D could complete the intended purchase, including going personally to pick up a check from Customer D. The allegations as against Claimant are false.

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 parties, Respondents MSCO and WFCS are each 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 11, 2021 1 session

ARBITRATOR

Will Murphy

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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

Will Murphy

Will Murphy
Sole Public Arbitrator

05/18/2021

Signature Date

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May 19, 2021

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