

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Christopher Brian Carolan

Case Number: 20-03051

vs.

Respondents

A. G. Edwards & Sons, Inc.
Morgan Stanley & Co., LLC

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. Members

REPRESENTATION OF PARTIES

For Claimant Christopher Brian Carolan (“Claimant”): Robert L. Gonser, Esq., Gonser Law PC, Lafayette, California.

For Respondent A. G. Edwards & Sons, Inc. (“A.G. Edwards”): Geoffrey S. Beckham, Esq., Wells Fargo Legal Department, San Francisco, California.

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

Hereinafter, A.G. Edwards and Morgan Stanley are collectively referred to as “Respondents”.

CASE INFORMATION

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

Claimant signed the Submission Agreement: September 8, 2020.

Statement of Answer filed by A.G. Edwards on or about: November 2, 2020.

A.G. Edwards & Sons, Inc. signed the Submission Agreement: November 2, 2020.

Statement of Answer filed by Morgan Stanley on or about: November 2, 2020.

Morgan Stanley signed the Submission Agreement: November 2, 2020.

CASE SUMMARY

In the Statement of Claim, Claimant asserted a claim seeking of customer dispute information from registration records maintained by the Central Registration Depository (“CRD”).

In the Statement of Answer, A.G. Edwards denied the allegations made in the Statement of Claim and took no position Claimant’s request for expungement.

In the Statement of Answer, Morgan Stanley denied the allegations made in the Statement of Claim and did not oppose Claimant’s request for expungement.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of Occurrence Numbers 1410576 and 1419217 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. the claim, allegation, or information is false; and
2. Compensatory damages in the amount of \$1.00 from Respondents.

In the Statement of Answer, A.G. Edwards requested:

1. Claimant’s request for compensatory damages be denied; and
2. All forum and hearing fees assessed in connection with this matter be assessed to Claimant.

In the Statement of Answer, Morgan Stanley requested Claimant’s request for compensatory damages 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 April 28, 2021, Claimant advised that the customer in Occurrence Numbers 1410576 and 1419217 (“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 6, 2021, so the parties could present oral argument and evidence on Claimant’s request for expungement.

Respondents participated in the expungement hearing and, as stated in the Statements of Answer, did not oppose the request for expungement.

The Customer did not participate in the expungement hearing. The Customer submitted a letter in support of Claimant’s request for expungement. 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 has not previously ruled on expungement of the same occurrences in the CRD.

The Arbitrator noted that there were no individual settlement agreements related to Occurrence Numbers 1410576 and 1419217 as the complaint was related to the illiquidity of the Customer's Auction Rate Securities ("ARS") and the complaint was resolved as part of a global settlement between A.G. Edwards (whose broker-dealer operations were consolidated into Wachovia Securities, which later was acquired by Wells Fargo Advisors) and securities regulators. The Arbitrator noted that Claimant was not involved in the global settlement agreement and did not contribute to the settlement amount, which was a repurchase of the ARS at par value. The Arbitrator also noted that the settlement was not conditioned on the Customer not opposing the request for expungement.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: pleadings; Claimant's exhibits; statement from the Customer supporting Claimant's expungement request; and the original complaint from the Customer.

AWARD

After considering the pleadings, the testimony and evidence presented at the 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 1410576 and 1419217 from registration records maintained by the CRD for Claimant Christopher Brian Carolan (CRD Number 4402629) with the understanding that, pursuant to Notice to Members 04-16, Claimant Christopher Brian Carolan 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 false.

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

In and around 2007, the Customer and his spouse were the clients of Claimant, Mr. Carolan. With his consultation, they invested a portion of their portfolio in ARS. At this time, Claimant worked for A.G. Edwards.

In 2008, there was a failure of the ARS auctions, which rendered the ARS illiquid and endangered their value. By this time, Claimant was working for Morgan Stanley. There had never before been a failure of the ARS auction, and this occurred in the broader context of a worldwide collapse of financial markets.

On June 11, 2008, the Customer wrote a letter to Claimant's employer, Morgan Stanley, stating that he was very unhappy with the situation regarding the ARS, that he had not been adequately informed of their risks, and demanded Morgan Stanley to repurchase them from him at the price he had paid for them.

As a result, the CRD disclosures regarding Claimant which are at issue here, CRD Disclosures #1410576 and #1419217, were entered into Claimant's records. These are the CRD disclosures that Claimant requests to have expunged.

Claimant credibly testified that he had fully informed the Customer, who was a sophisticated investor, of the nature of ARS, including their risks and possible issues with their liquidity.

Claimant also testified that, after the failure of the ARS, he had tried to get some relief for the Customer, but to no avail, and it was Claimant who prompted the Customer to write the letter to Morgan Stanley in an effort to put greater pressure on Morgan Stanley to respond. Ultimately, there were global settlements between Respondents, and many other firms, and a variety of regulatory bodies to provide relief to customers who had purchased ARS, including the Customer at issue here. Claimant did not participate in or contribute to any of those settlements.

Claimant testified that the Customer was never, in fact, unhappy with him, intended to complain about him, or to have a complaint placed on Claimant's records. Claimant also testified that the Customer remained his client at the present time.

Claimant also submitted, as an exhibit, a written statement from the Customer, dated October 16, 2020, fully supporting Claimant's assertion that the Customer was not complaining about Claimant, did not intend that any complaint be entered in Claimant's records, and supported Claimant's request for expungement.

Claimant additionally submitted a statement from the Customer stating that the Customer had wished to testify in the hearing in support of Claimant's request for expungement, but that his health prevented him from doing so.

Further, neither of the Respondents, A.G. Edwards (Wachovia) and Morgan Stanley, opposed Claimant's request for expungement.

Therefore, given Claimant's very credible testimony, the support of the underlying Customer for Claimant's motion, and the overall context of this matter, it is clear that the entries in question on Claimant's CRD are not true. It does not serve the public interest for these entries to remain on Claimant's CRD and I recommend the expungement.

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 firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as parties, Respondents 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 6, 2021 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing: May 6, 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

Philip Aaron Tymon

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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

Philip Aaron Tymon

Philip Aaron Tymon
Sole Public Arbitrator

05/25/2021

Signature Date

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.

May 25, 2021

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