

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Timothy V. Longo

Case Number: 20-03181

vs.

Respondent
Morgan Stanley DW Inc.
American Capital Partners, LLC

Hearing Site: New York, New York

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 Timothy V. Longo: Michael Ference, Esq., Sichenzia Ross Ference LLP, New York, New York.

For Respondent Morgan Stanley DW Inc.: Jeremy S. Winer, Esq., Morgan Stanley, New York, New York.

For Respondent American Capital Partners, LLC: John Gardini, American Capital Partners, LLC, Hauppauge, New York.

CASE INFORMATION

Statement of Claim filed on or about: September 11, 2020.

Timothy V. Longo signed the Submission Agreement: September 11, 2020.

Statement of Answer filed by Morgan Stanley DW Inc. on or about: November 4, 2020.

Morgan Stanley DW Inc. signed the Submission Agreement: November 3, 2020.

Statement of Answer filed by American Capital Partners, LLC on or about: November 5, 2020.

American Capital Partners, LLC 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, Morgan Stanley DW Inc. took no position on Claimant’s expungement request.

In the Statement of Answer, American Capital Partners, LLC did not contest Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Numbers 1223345, 1086562, and 1086564; and compensatory damages in the amount of \$1.00 from Respondent.

In the Statement of Answer, Respondent Morgan Stanley DW Inc. did not set forth a specific relief request.

In the Statement of Answer, Respondent American Capital Partners, LLC requested that Claimant’s request for monetary 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.

Respondent American Capital Partners, LLC 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, is bound by the determination of the Arbitrator on all issues submitted.

On September 13, 2021, Claimant advised that the customers in Occurrence Numbers 1223345 and 1086564 were served with the Statement of Claim and notice of the date and time of the expungement hearing. Claimant also advised that he was unable to serve the Statement of Claim and the notice of the expungement hearing on the customer related to Occurrence Number 1086562 as the customer is deceased

The Arbitrator conducted a recorded hearing by videoconference on October 13, 2021, so the parties could present oral argument and evidence on Claimant’s request for expungement.

Respondent Morgan Stanley DW Inc. participated in expungement hearing and Respondent American Capital Partners, LLC did not participate.

The customers also did not participate in the expungement hearing. The Arbitrator found that the customers in Occurrence Numbers 1223345 and 1086562 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 also unable to review the settlement documentation related to Occurrence Numbers 1223345 and 1086562 due to the age of the disputes. Claimant has no documents in his possession relating to the underlying occurrences. Based on Claimant's testimony, the Arbitrator noted that the settlements were not conditioned on any party to the settlements not opposing the expungement request and that Claimant did not contribute to the settlement amounts.

The Arbitrator noted that the dispute related to Occurrence Number 1086564 was not settled and, therefore, there was no settlement document to review.

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 Numbers 1223345, 1086562, and 1086564 from registration records maintained by the CRD for Claimant Timothy V. Longo (CRD Number 3059691) with the understanding that, pursuant to Notice to Members 04-16, Claimant Timothy V. Longo 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 findings based on the following reasons:

The customers alleged in their complaints a breach of fiduciary duty. Claimant established via testimony and documentary evidence that all three customer complaints were non-discretionary accounts and that with each customer, he had frequent communication about the asset composition and allocation of each account. All three customers were heavily invested in the technology sector despite Claimant's attempts to convince them to diversify. The customers also received required statements from Respondent Morgan Stanley DW, Inc. ("MSDW") which provided the status of account performance. There were no complaints submitted to MSDW until the technology sector

experienced a significant downturn that negatively impacted their account values. MSDW investigated the customer complaint in occurrence number 1086564 and concluded that it was without merit. The customer did not pursue the matter subsequent to MSDW's determination. Though the remaining two customer complaints were ultimately settled; Claimant played no part in the settlement negotiations and did not contribute to the settlement amounts. At the time of the settlements, Claimant was no longer employed with MSDW. Furthermore, the settlement amounts were a fraction of the amount included in each customer's complaint. For the aforementioned reasons, Claimant's request for expungement is granted.

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 events giving rise to the dispute. Accordingly, as parties, Respondents is 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 25, 2021 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing: October 13, 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

Josian Antoine

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Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

Arbitrator's Signature

Josian Antoine

Josian Antoine
Sole Public Arbitrator

10/21/2021

Signature Date

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October 22, 2021

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