

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Michael Robert Greenfield

Case Number: 20-03210

vs.

Respondents

Morgan Stanley
The GMS Group, 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

REPRESENTATION OF PARTIES

For Claimant Michael Robert Greenfield: Mark S. Simms, Esq., Simms Law, P.A., Fort Lauderdale, Florida.

For Respondent Morgan Stanley: Gina Shlaferman, Esq., Morgan Stanley, St. Petersburg, Florida.

For Respondent The GMS Group, LLC (“GMS”): Matthew E. Lipman, Esq., Law Offices of Matthew E. Lipman, New York, New York.

CASE INFORMATION

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

Michael Robert Greenfield signed the Submission Agreement: September 11, 2020.

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

Morgan Stanley signed the Submission Agreement: September 18, 2020.

Statement of Answer filed by Respondent GMS on or about: November 4, 2020.

The GMS Group, LLC signed the Submission Agreement: November 4, 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 Morgan Stanley took no position on Claimant's expungement request, and denied any material allegations of wrongdoing asserted in the Statement of Claim and denied any liability for damages in any amount.

In the Statement of Answer, Respondent GMS took no position on Claimant's expungement request, and denied any material allegations of wrongdoing asserted in the Statement of Claim and denied any liability for damages in any amount.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Numbers 1939235, 1720317, 1676750, and 1769627; and compensatory damages in the amount of \$1.00 from Respondents.

In the Statement of Answer, Respondent Morgan Stanley requested that any and all forum fees be assessed against Claimant.

In the Statement of Answer, Respondent GMS requested that any and all forum fees be assessed against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

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

On July 6, 2021, Claimant advised that the customers in Occurrence Numbers 1939235 ("Customers A"), 1720317 ("Customer B"), 1676750 ("Customer C"), and 1769627 ("Customers D"), hereinafter collectively as the "Customers," were 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 August 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 Statement of Answer, did not oppose the request for expungement.

The Customers did not participate in the expungement hearing. The Arbitrator found that the Customers 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 reviewed the settlement documentation related to Occurrence Numbers 1939235, 1720317, 1676750, and 1769627, considered the amount of payment made to any party to the settlements, and considered other relevant terms and conditions of the settlements. 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.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's testimony; documentary evidence in the form of emails, account letters, account information, and account statements; settlement agreements; and Claimant's BrokerCheck® Report.

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. Claimant's claim for \$1.00 in compensatory damages is denied.
2. The Arbitrator recommends the expungement of all references to Occurrence Numbers 1939235, 1720317, 1676750, and 1769627 from registration records maintained by the CRD for Claimant Michael Robert Greenfield (CRD Number 5406611) with the understanding that, pursuant to Notice to Members 04-16, Claimant Michael Robert Greenfield 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, the Arbitrator has made the following Rule 2080 affirmative findings of fact:

As to Occurrence Numbers 1676750 and 1720317

The claim, allegation, or information is factually impossible or clearly erroneous.

As to Occurrence Numbers 1939235 and 1769627

The claim, allegation, or information is false.

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

Claimant is an experienced financial advisor who concentrates on fixed-income products and municipal securities and describes his investment philosophy for his clients as "buy and hold."

As to Occurrence 1939235

The preponderance of the evidence shows this claim is false under Rule 2080(b)(1)(c). Claimant testified Customers A were a high net worth married couple with a family trust looking for income from bank investment grade/long-term investments. The customer/husband was a retired accountant and Claimant's point of contact. The two were in regular, routine communication ("at least weekly") and discussed any "instability or fluctuations as well as new opportunities." Claimant cogently explained why the product met all of Customers A's requirements and was suitable for them and the documentary evidence supports this with a listing of "moderate" risk tolerant with investment objectives of income, capital appreciation, aggressive income, and speculation. Testimony by Claimant included a

favorable comparison in investment amount and rating of the product in question as it related to other bonds in Customers A's portfolio. In light of all the evidence, the claim of unsuitability is false.

As to Occurrence 1720317

The Arbitrator finds the allegations clearly erroneous under Rule 2080(b)(1)(a). Claimant credibly testified Customer B was entirely unsolicited and had called the brokerage office solely for the purpose of speaking to someone about buying "into the new Puerto Rican bond issue from Respondent Morgan Stanley." Claimant's contact with Customer B was limited to fulfilling this one transaction as requested. "This was a one and done with no other contact." Contrary to Customer B's allegation, Claimant owed only a limited fiduciary duty for this unsolicited trade. Claimant testified he explained the product to Customer B and made sure the customer knew and understood the product. This is further supported by the emails of August 2013, which were submitted into evidence. Conversely, even had this been a solicited customer, the bond purchase, given its rating at the time along with consideration of Customer B's income, net worth, investment objective and risk tolerance, as evidenced by the new account letter and confirmation document and considering the proof of Customer B as a highly knowledgeable investor, this transaction would have been suitable in this case.

As to Occurrence 1676750

Customer C alleged unsuitability with respect to the purchase of Puerto Rico bonds. This allegation is clearly erroneous under the standard of Rule 2080(b)(1)(a). The evidence presented at the expungement hearing shows Customer C was a sophisticated investor concerned with generating tax-free income. Claimant's credible testimony concerning the bond's high ratings at the time of purchase, as well as its comparison to the ratings of all other bonds in Customer C's portfolio at the time, plus the documentary evidence of emails from August 2013 between Customer C and Claimant, refute that the purchase was unsuitable. Claimant not only expressed his surprise at Customer C's allegations at the time the complaint was originally made as shown by documentary evidence, he also explained the bonds met all of the criteria Customer C had established and were suitable.

The Arbitrator finds the allegations against Claimant to be false.

As to Occurrence 1769627

Given the clear, unequivocal, and credible testimony of Claimant, the Arbitrator finds Customers D's allegations to be false under Rule 2080(b)(1)(c). Claimant stated he had conversations once a week with one or the other of the two customers (husband and wife) in this case. The customers were looking for income in order to maintain their lifestyle and wanted a certain net return. The underlying statement of claim falsely refers to them as "conservative," but the documents indicated their risk tolerance as "moderate." Claimant explained in detail why he recommended each of the investments and why each was suitable at the time of purchase. Suitability is further supported by the fact that the evidence indicated Customers D had purchased unrated bonds during the two years prior to the instant timeframe. Moreover, testimony upholds Customers D as knowledgeable and sophisticated with an understanding of terms, including coupon rates, and "call" provisions. According to the testimony, Customers D decided on a course of action to transfer each of these investments out to a Charles Schwab account soon after Claimant completed each. Not only were each of the investments entirely suitable for these customers, but also the losses in their statement of claim would have been more than recovered had they not sold

them in the Charles Schwab account contrary to Claimant’s advice. Claimant testified Customers D would not have suffered any loss had they followed his advice and said, “the same reason to buy was the same reason to hold.” Claimant presented documentary evidence concerning current trading prices for the investments to support this.

3. 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:

Expungement 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 Morgan Stanley and GMS 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 7, 2021 1 session

= \$ 50.00

One (1) hearing session on expungement request @ \$50.00/session
Hearing: August 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

Leslie L. Cooney

-

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

Leslie L. Cooney

Leslie L. Cooney
Sole Public Arbitrator

08/18/2021

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.

August 18, 2021

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