

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Leslie Hull Miller

Case Number: 20-03676

vs.

Respondent
Morgan Stanley

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. Member.

REPRESENTATION OF PARTIES

For Claimant Leslie Hull Miller (“Claimant”): Zachary Hayes-Macaluso, Esq., FA Expungement, LLC, Denver, Colorado.

For Respondent Morgan Stanley (“Respondent”): Jeffrey P. Palmer, Esq., Greenberg Traurig, LLP, East Palo Alto, California.

CASE INFORMATION

Statement of Claim filed on or about: October 29, 2020.
Claimant signed the Submission Agreement: October 29, 2020.

Statement of Answer filed by Respondent on or about: December 22, 2020.
Respondent signed the Submission Agreement: January 4, 2021.

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 did not oppose Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Number 1890758 from Claimant's CRD records pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false.

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

OTHER ISSUES CONSIDERED AND DECIDED

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

On May 10, 2021, Claimant advised that the customer in Occurrence Number 1890758 ("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 July 20, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

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

The Customer did not participate in the expungement hearing. 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 did not previously rule on expungement of the same occurrence in the CRD.

The Arbitrator noted that the dispute related to Occurrence Number 1890758 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 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:

The Arbitrator recommends the expungement of all references to Occurrence Number 1890758 from registration records maintained by the CRD for Claimant Leslie Hull Miller (CRD Number 5215413) with the understanding that, pursuant to Notice to Members 04-16, Claimant Leslie Hull Miller 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:

The Customer complained that Claimant’s recommendation that she invest in Sun Edison (“SUNE”) was unsuitable because it was not appropriate for her level of risk tolerance which she described as conservative in her complaint to Morgan Stanley dated 6/28/16. Prior to and around the time of the investment, Respondent sent periodic account confirmation letters to the Customer at least two occasions asking her to confirm her risk tolerance level which was listed as moderate in the letter and her investment objectives which were listed as capital appreciation and income. The Customer did not request any changes to her profile at the time. Claimant testified that she had advised the Customer to diversify her portfolio which was highly concentrated in a single security, that the Customer had expressed interest in purchasing socially responsible and environmentally conscious investments and that the purchase of SUNE was consistent with the Customer’s interest, her risk tolerance level, and her investment objectives.

Evidence submitted by Claimant showed that SUNE was a highly rated equity at the time of the recommendation which subsequently collapsed due to subsequent events that were not reasonably foreseeable at the time of the investment. The Arbitrator’s opinion is that Claimant had a reasonable basis for recommending the investment in SUNE, that the investment was suitable at the time of the recommendation, and thus finds the Customer’s complaint to be false. The Customer did not submit an objection to the expungement request and chose not to attend the hearing or submit evidence in support of her complaint.

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 = \$ 1,575.00

**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 a party Respondent is assessed the following:

Member Surcharge	= \$	1,900.00
Member Process Fee	= \$	3,750.00

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 @ \$1,125.00/session	= \$	1,125.00
Pre-Hearing Conference: March 1, 2021	1 session	
One (1) hearing session on expungement request @ \$1,125.00/session	= \$	1,125.00
Hearing: July 20, 2021	1 session	
Total Hearing Session Fees	= \$	2,250.00

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

Peter H. Daly

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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

Peter H. Daly

Peter H. Daly
Sole Public Arbitrator

07/23/2021

Signature Date

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July 26, 2021

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