

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Eileen A. Moody

Case Number: 20-04054

vs.

Respondent
Morgan Stanley

Hearing Site: Houston, Texas

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: Customer vs. Member

REPRESENTATION OF PARTIES

For Claimant Eileen A. Moody (“Claimant”): John S. Moody, Houston, Texas.*

For Respondent Morgan Stanley (“Respondent”): Joseph L. Calabrese, Esq., Bressler, Amery & Ross, P.C., New York, New York.

*FINRA recorded the appearance of Claimant’s representative at the time of filing of the Statement of Claim. Please see the Other Issues Considered and Decided section of this Award for information on whether Claimant’s representative appeared at the expungement hearing.

CASE INFORMATION

Statement of Claim filed on or about: January 13, 2021.
Claimant signed the Submission Agreement: December 14, 2020.

Respondent did not file a Statement of Answer or sign the Submission Agreement.

CASE SUMMARY

In the Statement of Claim, Claimant alleged that Respondent mismanaged her two accounts and ignored her stated risk tolerance.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested damages in the amount of \$100,000.00.

Respondent filed a request for expungement, on behalf of Unnamed Party Asher Feinberg (“Feinberg”), of all references to this matter from Central Registration Depository (“CRD”) registration records. Please see the Other Issues Considered and Decided section of this Award for more information.

OTHER ISSUES CONSIDERED AND DECIDED

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

Respondent did not file a Statement of Answer or a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure (“Code”) and, having appeared, is bound by the determination of the Arbitrator on all issues submitted.

On February 25, 2021, Respondent filed notice of Claimant’s agreement to dismiss this matter with prejudice and that it would pursue expungement. On the same day, Claimant also filed notice of dismissal with prejudice. Therefore, the Arbitrator made no determination with respect to any of the relief requests contained in the Statement of Claim.

On March 29, 2021, Respondent filed a Motion for Expungement on behalf of Unnamed Party Asher Feinberg (“Feinberg”), to which no response was filed.

The Arbitrator conducted a recorded, telephonic hearing on May 21, 2021, so the parties could present oral argument and evidence on Respondent’s request for expungement on behalf on Feinberg.

Neither Claimant nor Claimant’s representative participated in the expungement hearing.

The Arbitrator reviewed Feinberg’s BrokerCheck® Report. The Arbitrator noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrence in the CRD.

The Arbitrator noted that the dispute related to Occurrence Number 2085415 was not settled and, therefore, there was no settlement documentation to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Feinberg’s testimony and the documents in the record, particularly, Feinberg’s BrokerCheck® Report, dismissal with prejudice documents, and Respondent’s email with Claimant’s (in which Claimant declined participating in the expungement hearing).

The Award in this matter may be executed in counterpart copies.

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 the above-captioned arbitration (Occurrence Number 2085415) from registration records maintained by the CRD for Unnamed Party Asher Milton Feinberg (CRD Number 2189195) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Asher Milton Feinberg 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 12805 of the Code, the Arbitrator has made the following Rule 2080 affirmative finding of fact:

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

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

Evidence was presented at the expungement hearing which led the Arbitrator to believe that changes in Claimant's account balances occurred due to the maturity of certain assets in her account. Claimant failed to respond to communications from Feinberg requesting instructions as to how to reinvest the resulting cash in the accounts. Feinberg's unrebutted testimony was that the accounts were non-discretionary and that Claimant was traveling and did not return phone calls from Feinberg. Feinberg also testified that, after discussions with Claimant regarding the reasons for the asset changes in her accounts, Claimant dismissed her claim with prejudice.

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	= \$	975.00
Expungement 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	= \$	1,100.00
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(s), including a pre-hearing conference with the Arbitrator(s), which lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session @ \$450.00/session	= \$	450.00
Pre-Hearing Conference: April 23, 2021	1 session	
One (1) hearing session on expungement request @ \$1,125.00/session	= \$	1,125.00
Hearing: May 21, 2021	1 session	
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Total Hearing Session Fees	= \$	1,575.00

The Arbitrator has assessed the total hearing session fees to Respondent.

All balances are payable to FINRA Dispute Resolution Services and are due upon receipt.

ARBITRATOR

G. Maynard Green - 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

G. Maynard Green

G. Maynard Green
Sole Public Arbitrator

06/02/2021

Signature Date

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June 03, 2021

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