

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Richard L. Morse

Case Number: 21-00043

vs.

Respondent
Morgan Stanley Smith Barney, 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. Member

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Richard L. Morse: Seth E. Lipner, Esq., Deutsch & Lipner, Garden City, New York.

For Respondent Morgan Stanley Smith Barney, LLC: Alejandro Schwed, Esq., Morgan Stanley Smith Barney, LLC, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: January 8, 2021.

Richard L. Morse signed the Submission Agreement: January 4, 2021.

Statement of Answer filed by Respondent on or about: May 10, 2021.

Morgan Stanley Smith Barney, LLC signed the Submission Agreement: May 10, 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 took no position on Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Number 1010532

and compensatory damages in the amount of \$1.00 from Respondent.

In the Statement of Answer, Respondent objected to the request for compensatory damages.

At the hearing, Claimant withdrew the request for \$1.00 in damages.

OTHER ISSUES CONSIDERED AND DECIDED

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

On May 4, 2021, Claimant advised that the customer in Occurrence Number 1010532 was served with the Statement of Claim and notice of the date and time of the expungement hearing. On May 12, 2021, Claimant filed an Affidavit confirming that the customer was served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Panel conducted a recorded hearing by videoconference on June 18, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing and did not oppose the request for expungement.

The customer did not participate in the expungement hearing. The Panel found that the customer had notice of the expungement request and hearing.

The Panel reviewed Claimant's BrokerCheck® Report. The Panel noted that a prior arbitration panel or court did not previously rule on expungement of the same occurrence in the CRD.

The Panel also reviewed the settlement documentation related to Occurrence Number 1010532, considered the amount of payment made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Panel noted that the settlement was not conditioned on any party to the settlement not opposing the expungement request and that Claimant did not contribute to the settlement amount.

In recommending expungement, the Panel 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 Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel recommends the expungement of all references to Occurrence Number 1010532 from registration records maintained by the CRD for Claimant Richard L. Morse (CRD Number 2410788) with the understanding that, pursuant to Notice to Members 04-16, Claimant Richard L. Morse 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 Panel has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; and the claim, allegation, or information is false.

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

An action was commenced in 2000 against Claimant and Respondent by the customer claiming that the Claimant sold two stocks without her permission. The customer further claimed that the proceeds were invested through Respondent’s professional asset management program and sought damages in excess of \$150,000.00. Claimant credibly testified that after the customer contacted him concerning the concentrated position in the two stocks she had inherited, he had numerous conversations with her wherein she agreed with his recommendation that the positions be liquidated and placed in a diversified portfolio. He further testified and offered credible evidence that the customer signed the client authorization forms and agreed with Claimant's recommendations. When the price of the concentrated stocks rose, she regretted her decision to sell. In the Statement of Claim against the Respondent, she admitted her consent to the selling of the concentrated stocks.

2. 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 = \$ 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 that employed the associated person at the time of the event giving rise to the dispute. Accordingly, as a party, Respondent Morgan Stanley Smith Barney, LLC is assessed the following:

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

Hearing Session Fees and Assessments

The Panel has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Arbitrators, including a pre-hearing conference with the Arbitrators, which lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session with Panel @ \$1,125.00/session	= \$	1,125.00
Pre-Hearing Conference: April 29, 2021	1 session	
One (1) hearing session on expungement request @ \$1,125.00/session	= \$	1,125.00
Hearing: June 18, 2021	1 session	
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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.

ARBITRATION PANEL

Madelon M. Rosenfeld	-	Public Arbitrator, Presiding Chairperson
Gerald M. Levine	-	Public Arbitrator
Steven Gargiulo	-	Non-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.

Concurring Arbitrators' Signatures

Madelon M. Rosenfeld

Madelon M. Rosenfeld
Public Arbitrator, Presiding Chairperson

06/22/2021

Signature Date

Gerald M. Levine

Gerald M. Levine
Public Arbitrator

06/22/2021

Signature Date

Steven Gargiulo

Steven Gargiulo
Non-Public Arbitrator

06/22/2021

Signature Date

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June 23, 2021

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