

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Gary Jon Rosen

Case Number: 21-00057

vs.

Respondent
Morgan Stanley

Hearing Site: Los Angeles, 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 Gary Jon Rosen (“Claimant”): Robert L. Gonser, Esq., Gonser Law PC, Lafayette, California.

For Respondent Morgan Stanley (“Respondent”): Jeffrey S. Jacobi, Esq., Morgan Stanley, San Francisco, California.

CASE INFORMATION

Statement of Claim filed on or about: January 15, 2021.
Claimant signed the Submission Agreement: January 13, 2021.

Statement of Answer filed by Respondent on or about: February 25, 2021.
Respondent signed the Submission Agreement: February 24, 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:

1. Expungement of Occurrence Number 2054290 from Claimant's CRD records pursuant to FINRA Rules 2080(b)(1)(A) and 2080(b)(1)(C); and
2. Compensatory damages in the amount of \$1.00 from Respondent.

In the Statement of Answer, Respondent requested compensatory damages in the amount of \$1.00 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.

On June 22, 2021, Claimant advised that the customer in Occurrence Number 2054290 ("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 June 30, 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 2054290 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 Statement of Claim and Claimant's testimony.

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 2054290 from registration records maintained by the CRD for Claimant Gary Jon Rosen (CRD Number 6644935) with the understanding that, pursuant to Notice to Members 04-16,

Claimant Gary Jon Rosen 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 findings of fact:

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

The claim, allegation, or information is false.

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

The Arbitrator finds that Claimant’s recommendation to the Customer to invest in the Alliance Bernstein MBF was appropriate and consistent with the Customer’s investment objectives and risk tolerance. At all times, Claimant acted appropriately and in line with the Customer’s stated goals of income and liquidity.

Apparently, the sole reason the Customer transferred funds to Respondent was to obtain a free, fee-waived American Express Platinum card offered by the firm. It was not the Alliance Bernstein MBF investment which upset the Customer, but the fact that he did not immediately receive the American Express card. In fact, he stated in the email dated October 25, 2019 to Claimant: “The reason I invested my money with you guys and not a different bank was to get the platinum card...”.

Claimant never represented to the Customer that he could not lose money in the Alliance Bernstein MBF. Absent the free credit card, which he failed to apply for as required, the Customer withdrew his money from Respondent and liquidated his position after only five (5) weeks, resulting in a \$10,000 loss. Had he waited only one year, his investment would have seen a profit of approximately \$37,000. A subsequent claim for the loss was made to Respondent, which was denied, as was a small claims court action, which was also rejected.

Accordingly, with respect to the matter, the Arbitrator in this case finds that under FINRA Rules 2080 (b)(1)(A) and 2080(b)(1)(C), the claim is clearly erroneous and false and recommends that Claimant’s CRD records be expunged. Further, it should be noted that Respondent stated on the record that they have no objection to expungement.

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
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**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

Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

June 1, 2021, postponement requested by Parties	= \$	1,125.00
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Total Postponement Fees	= \$	1,125.00

The Arbitrator has assessed \$562.50 of the postponement fees to Claimant.

The Arbitrator has assessed \$562.50 of the postponement fees to Respondent.

Last-Minute Cancellation Fees

Fees apply when a hearing on the merits is cancelled within ten calendar days before the start of a scheduled hearing session:

June 1, 2021, cancellation requested by Parties	= \$	600.00
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Total Last-Minute Cancellation Fees	= \$	600.00

The Arbitrator has assessed \$300.00 of the last-minute cancellation fees to Claimant.

The Arbitrator has assessed \$300.00 of the last-minute cancellation fees to Respondent.

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) hearing session on expungement request @ \$1,125.00/session	= \$	1,125.00
Hearing: June 30, 2021 1 session		
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Total Hearing Session Fees	= \$	1,125.00

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

Barbara M. Zak

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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

Barbara M. Zak

Barbara M. Zak
Sole Public Arbitrator

08/02/2021

Signature Date

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August 03, 2021

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