Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
John Mustillo

vs.

Respondent
Morgan Stanley

Case Number: 21-00393

Hearing Site: Jersey City, New Jersey

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 John Mustillo: Gary S. Menzer, Esq., and Michael Hill, Esq., Menzer & Hill, P.A., Boca Raton, Florida*.

For Respondent Morgan Stanley: Irisa Chen, Esq. and Abigail Elrod, Esq., Morgan Stanley, New York, New York.

*FINRA recorded the appearance of Claimant's counsel at the time of filing of the Statement of Claim. Counsel's representation of Claimant may have ended with the parties' settlement. Please see the Other Issues Considered and Decided section of this Award for information on whether Claimant's counsel appeared at the expungement hearing.

CASE INFORMATION

Statement of Claim filed on or about: February 12, 2021.
John Mustillo signed the Submission Agreement: February 12, 2021.

Statement of Answer filed by Respondent on or about: May 10, 2021.
Morgan Stanley signed the Submission Agreement: May 10, 2021.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: negligent supervision; negligence; unsuitability; failure to supervise; breach of contract; breach of fiduciary duty; misrepresentation; and omissions of material facts. The causes of action relate to Merck stock and Covered Call Options Strategy.

Unless specifically admitted in the Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested compensatory damages of approximately $17,500.00; statutory damages; recessionary damages, accrued interest; refund of all costs, fees, and commissions; attorneys' fees; lost opportunity damages; punitive damages; filing fees; and other remedies the Panel deems proper and appropriate.

In the Statement of Answer, Respondent requested that the claims be denied in their entirety, that Claimant be denied the relief sought in the Statement of Claim, and that this matter be expunged from the CRD record of financial advisor Ryan Wroblewski.

Respondent Morgan Stanley filed a request for expungement on behalf of Unnamed Party Ryan Wroblewski 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.

On December 1, 2021, Claimant filed a notice of settlement. Therefore, the Arbitrator made no determination with respect to any of the relief requests contained in the Statement of Claim.

On December 7, 2021, Respondent Morgan Stanley filed a Motion for Expungement on behalf of Unnamed Party Ryan Wroblewski. On December 8, 2021, Claimant filed a response not taking a position with respect to the Motion for Expungement.

The Arbitrator conducted a recorded, telephonic hearing on December 10, 2021, so the parties could present oral argument and evidence on the request for expungement on behalf of Unnamed Party Ryan Wroblewski.

Claimant and counsel did not participate in the expungement hearing and did not oppose the request for expungement.

The Arbitrator reviewed Unnamed Party Ryan Wroblewski'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 also reviewed the settlement documentation, considered the amount of payment made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on any party to the settlement not opposing the request for expungement and that Unnamed Party Ryan Wroblewski did not contribute to the settlement amount.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the pleadings; motion for expungement and exhibits; Unnamed Party Ryan Wroblewski's BrokerCheck® Report; the Settlement Agreement; and Unnamed Party Ryan Wroblewski's testimony.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. The Arbitrator recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2072707) from registration records maintained by the CRD for Unnamed Party Ryan Wroblewski (CRD Number 6158332) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Ryan Wroblewski 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 of Arbitration Procedure ("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:

   > At the evidentiary hearing, the financial advisor ("FA") testified that he is in his thirties and employed at Morgan Stanley in its Call Center since 2016. The testimony related to his employment is supported by his CRD Snapshot and BrokerCheck® Report, both in evidence. He stated that he has a long career ahead of him and that this disclosure negatively affects his business.
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   > Claimant in the underlying arbitration alleged, in his Statement of Claim, that the covered call strategy implemented in his account with Respondent was not conservative as he wished. Claimant also alleged, again in his Statement of Claim, that the Meridian Wealth Management Group ("Meridian"), to whom the FA introduced him, failed to wind down the aforementioned strategy being implemented in his account pursuant to his instruction once he became dissatisfied. Neither of Claimant's allegations is supported by the testimonial and documentary evidence.
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   > Claimant is a retired executive of Merck & Co. ("Merck"). The FA recounted that in 2018, Claimant called into the Call Center and spoke to him about a concentrated position he held in Merck stock. The FA suggested looking into the opportunity to engage in a covered call option strategy. Claimant was interested and the FA arranged for a telephone call between Claimant, himself and Meridian, the group that specializes in covered call option strategy, to introduce Claimant to the team and to discuss the

strategy. He stated that there were also follow-up calls among Claimant, the FA and Meridian to discuss the strategy. This testimony was supported by the interactions notes in evidence. The Meridian Group explained that the strategy would give the advisors discretion to trade in Claimant's account. According to the FA, Claimant was excited to get started with the strategy.

Claimant decided to implement the strategy in July 2018. According to Respondent's documents in evidence, the strategy sought to generate additional income through call premiums on portfolios of concentrated stock. Claimant opened the account with approximately $300,000. The Options New Account Form and Client Agreement supports the FA's testimony that Claimant gave discretion to trade to the team. According to the Application for Expungement, Claimant engaged in the covered call option strategy beginning July 2018 utilizing 5,000 shares of his concentrated Merck stock position. The letter of authorization in evidence supports the FA's testimony. The FA testified that the goal of the strategy was to produce 2 to 4% income for Claimant over the 3-to-5-year full market cycle. This was supported by Respondent's documents in evidence. The Account Profile and Client Profile in evidence show that Claimant had a high liquid and total net worth, and his investment experience began in 1995. Claimant listed his primary objective to be capital appreciation with successive goals of income and aggressive income.

From July 2018, when the account was opened, through March 2020, the Merck stock price increased by almost 50%. The FA testified that this was "unprecedented for this type of stock". The FA characterized the situation as an "extremely challenging environment". Claimant's account statements for the period July 1-31, 2018 through the period of April 1-30, 2020 are all in evidence. The FA explained that as Merck's stock price increased, Claimant had to purchase call options in order to avoid having his Merck shares called away. He stated that Claimant had "modest losses" from the covered call strategy going into 2020. Then in March 2020, much of the stock market reacted to the news of the COVID-19 pandemic. By mid-March 2020, Claimant became uncomfortable with the strategy and considered winding it down.

The FA explained that Claimant's allegation that the covered call strategy was not conservative is not accurate. He described the strategy as "absolutely conservative" and explained that such a strategy serves as a hedge against the risks of holding a concentrated stock position such as the one held by Claimant. He also stated that covered calls are appropriate for retirement accounts such as Claimant's. He explained that Claimant's account was marked "aggressive" solely because it held one single concentrated position. This is consistent with an email in evidence between the two men.

The FA testified that the team did their best to communicate with Claimant to explain the covered call option strategy and to begin winding down the strategy when Claimant requested the team to do so. The communications referred to by the FA were memorialized in notes and emails in evidence. The FA also explained that Claimant's allegation that the team failed, in March 2020, to follow his instruction to settle certain options is also inaccurate. The FA testified that although he was the relationship contact between the Claimant and the team, he was not part of the team, nor was he an options trading expert and, therefore, he did not execute the trades in Claimant's account. Rather, the team executed the trades. The FA testified that when Claimant instructed the

team to start winding down the strategy in March 2020, the team did so with the intent that Claimant experience minimal losses. Specifically, the team's plan was to close out over time to avoid Claimant coming out of pocket. Claimant initially agreed.

Claimant eventually changed his mind. According to the FA, Claimant panicked and proceeded to help wind down the strategy against the advice of the team. He made capital injections of $2,500 and $3,000 into his account. Seeking to continue winding down the strategy himself, he then made the decision to close the strategy himself on March 31, 2020, realizing a loss of approximately $6,000. This is supported by the notes in evidence. According to the FA's testimony, supported by the transaction analysis in evidence, had Claimant left the open contracts to expire worthless, as the team intended, Claimant would have incurred approximately $300 in losses rather than more than $6,000. Claimant ultimately had gains of approximately $56,000 as evidenced by the Gain (Loss) Analysis in evidence. According to the FA, Claimant still holds an account with Morgan Stanley.

Claimant sought approximately $17,500.00 in compensatory damages in the underlying arbitration. Although he was named in the pleadings, the FA was not made a party to the underlying arbitration. The dispute was settled prior to the evidentiary hearing. The FA testified that he understood this was a business decision on the part of Respondent to avoid the costs of the in-person evidentiary hearing. The FA further testified that he did not participate in the settlement negotiations or contribute to the settlement. The settlement agreement supported his testimony that he was not a party to the settlement and as such, did not contribute.

The preponderance of the evidence shows that the allegations made by Claimant in the underlying arbitration are clearly erroneous. The FA's hearing testimony is credible. There is no evidence of wrongdoing on the part of the FA. The record is well-documented and contains no contradictory evidence. The Arbitrator finds that Claimant's allegations were clearly erroneous within the meaning of FINRA Rule 2080(b)(1)(A). As such, this customer dispute information has no meaningful investor protection or regulatory value.

FEES

Pursuant to the Code of Arbitration Procedure ("Code"), the following fees are assessed:

Filing Fees
FINRA Dispute Resolution Services assessed a filing fee* for each claim:

Initial Claim Filing Fee	=$ 425.00
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 that employed the associated person at the time of the event giving rise to the dispute. Accordingly, as a party, Respondent Morgan Stanley is assessed the following:

Member Surcharge	=$ 450.00
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 @ $450.00/session	=$ 450.00
Pre-Hearing Conference: June 4, 2021 1 session	
One (1) hearing session on expungement request @ $1,125.00/session	=$ 1,125.00
Hearing: December 10, 2021 1 session	
Total Hearing Session Fees	=$ 1,575.00

The Arbitrator has assessed $225.00 of the hearing session fees to Claimant.

The Arbitrator has assessed $1,350.00 of the hearing session fees to Respondent, which includes the fees for the December 10, 2021 expungement hearing.

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

ARBITRATOR

Annamaria Boccia Smith - 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

Annamaria Boccia Smith **01/07/2022**

Annamaria Boccia Smith
Sole Public Arbitrator

Signature Date

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January 07, 2022
Date of Service (For FINRA Dispute Resolution Services use only)