

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Ronald Waselenchuk

Case Number: 21-00686

vs.

Respondent
Morgan Stanley Smith Barney, LLC

Hearing Site: Boca Raton, Florida

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

This case was administered under the Special Proceeding option for simplified cases.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Ronald Waselenchuk: Teresa Verges, Esq. and Scott Eichhorn, Esq., University of Miami School of Law Investor Rights Clinic, Coral Gables, Florida.

For Respondent Morgan Stanley Smith Barney, LLC: Irisa Chen, Esq., Morgan Stanley Wealth Management, 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: March 12, 2021.

Ronald Waselenchuk signed the Submission Agreement: March 12, 2021.

Statement of Answer filed by Respondent on or about: May 4, 2021.

Morgan Stanley Smith Barney, LLC signed the Submission Agreement: May 4, 2021.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: negligence, breach of contract, breach of fiduciary duty, negligent misrepresentation and omissions, and respondeat superior. The causes of action relate to the alleged overconcentration of Claimant's entire individual retirement account ("IRA"), previously invested in bank Certificates of Deposit, in the stock of a foreign bank holding company.

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 in an amount no greater than \$50,000.00; pre-judgment interest at the legal rate on all sums recovered; all costs, expenses, and fees incurred in pursuing this claim; attorneys' fees; and any such other relief deemed just and proper.

In the Statement of Answer, Respondent requested the Statement of Claim be denied in its entirety, that expungement be granted to Unnamed Party Brant Eric Giere ("Giere"), and that Respondent be awarded costs.

Respondent filed a request for expungement, on behalf of Unnamed Party Giere (CRD Number 1971718), of all references to this matter (Occurrence Number 2122441) from the 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 October 5, 2021, Claimant filed an Unopposed Motion to Bifurcate Expungement Proceedings, requesting that Respondent's request for expungement on behalf of Unnamed Party Giere be set for a separate hearing subsequent to the special proceeding hearing on Claimant's case. On October 11, 2021, the Arbitrator granted the Motion.

On November 9, 2021, Claimant filed a notice of settlement in principle and a Notice of Settlement and Voluntary Dismissal on December 15, 2021. Therefore, the Arbitrator made no determination with respect to any of the relief requests contained in the Statement of Claim.

The Arbitrator conducted a recorded hearing by videoconference on December 1, 2021, so the parties could present oral argument and evidence on Respondent's request for expungement on behalf of Unnamed Party Giere.

Claimant's counsel participated in the expungement hearing and opposed the request for expungement.

On December 8, 2021, the Arbitrator issued a post-hearing Order directing the Parties to produce the final notice of settlement and final settlement agreement. On December 15, 2021, Claimant

produced the final notice of settlement and voluntary dismissal with prejudice, as well as the final settlement agreement.

The Arbitrator reviewed Unnamed Party Giere'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 Brant Eric Giere did not contribute to the settlement amount.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the admitted exhibits, Claimant's Statement of Claim, and Respondent's Statement of Answer.

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:

1. The Arbitrator recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2122441) from registration records maintained by the CRD for Unnamed Party Brant Eric Giere (CRD Number 1971718) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Brant Eric Giere 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 findings of fact:

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

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

The great preponderance of the evidence presented shows that Claimant and his broker, Unnamed Party Giere, spoke by telephone in March of 2015 when Claimant stated his request to transfer his entire IRA into Santander stock. Both Claimant in his affidavit, and Unnamed Party Giere in his testimony, have confirmed these events and the opening of the account with Respondent shortly thereafter. Claimant presented an affidavit and did not testify at the expungement hearing, but Unnamed Party Giere's testimony was credible, as was the testimony of Respondent's Complex Manager and Unnamed Party Giere's supervisor. Both witnesses testified to the allegation that Claimant's net worth was misstated,

and several account profile forms were admitted into evidence which prove that Claimant should have seen any misstatement of income or net worth. Further, Claimant alleged through his affidavit and in the pleadings that Unnamed Party Giere forgot about his account and did not sell his stock when Unnamed Party Giere sold the stock of Claimant's friend. Upon examination of Unnamed Party Giere, it was explained that different accounts are traded differently based on timing and tax consequences.

Without being able to elicit testimony from Claimant, Unnamed Party Giere's testimony is believable. Thus, Claimant's version of the facts is clearly erroneous. Also, documents produced by Respondent as exhibits prove that Claimant has a history of misstating his income and assets with loan applications. The Arbitrator finds Claimant's version of the facts not credible. The Arbitrator finds Claimant's allegations and version of events not supported by the evidence, and therefore, factually impossible. For these reasons, expungement of Occurrence Number 2122441 from Unnamed Party Giere's CRD record is recommended.

2. Any and all claims for relief not specifically addressed herein are denied.

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	= \$	600.00
Expungement Filing Fee	= \$	1,575.00

**The filing fee is made up of a non-refundable and a refundable portion.*

FINRA Dispute Resolution Services previously deferred Claimant's filing fee of \$600.00. Upon conclusion of the matter, the Arbitrator determined to waive the fee.

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 is assessed the following:

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

Postponement Fees

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

November 9, 2021, postponement requested by Parties	= \$	450.00
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Total Postponement Fees	= \$	450.00

The Arbitrator has waived Claimant's \$225.00 portion of the postponement fees.

The Arbitrator has assessed \$225.00 of the postponement fees to Respondent.

Last-Minute Cancellation Fees

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

November 9, 2021, cancellation requested by Parties	= \$	600.00
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Total Last-Minute Cancellation Fees	= \$	600.00

The Arbitrator has waived Claimant's \$300.00 portion of the last-minute cancellation fees.

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) pre-hearing session with a single Arbitrator @ \$450.00/session	= \$	450.00
Pre-Hearing Conference: July 22, 2021	1 session	
One (1) hearing session on expungement request @ \$1,125.00/session	= \$	1,125.00
Hearing: December 1, 2021	1 session	
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Total Hearing Session Fees	= \$	1,575.00

The Arbitrator has waived Claimant's \$225.00 portion of the hearing session fees.

The Arbitrator has assessed \$1,350.00 of the hearing session fees to Respondent.

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

ARBITRATOR

Andrea R. Jacobs

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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

Andrea R. Jacobs

Andrea R. Jacobs
Sole Public Arbitrator

12/22/2021

Signature Date

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.

December 22, 2021

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