

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimant

Ralph James Femminella

Case Number: 21-00695

vs.

Respondent

Morgan Stanley & Co., LLC

Hearing Site: Boca Raton, Florida

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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 Ralph James Femminella: Craig D. Stein, Esq., Stein & Stein, P.A., Palm Beach, Florida.

For Respondent Morgan Stanley & Co., LLC: Christopher M. Sacco, Esq., Morgan Stanley, St. Petersburg, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: March 15, 2021.

Ralph James Femminella signed the Submission Agreement: March 21, 2021.

Statement of Answer filed by Respondent on or about: May 14, 2021.

Morgan Stanley & Co., LLC signed the Submission Agreement: April 8, 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, denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of Occurrence Number 1429445.

In the Statement of Answer, Respondent did not delineate a specific relief request.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

On or about November 4, 2021, Claimant advised that the customer in Occurrence Number 1429445 ("Customer") was served with the Statement of Claim and notice of the date and time of the expungement hearing. On or about November 4, 2021, Claimant filed with FINRA Dispute Resolution Services, proof of service via FedEx and via USPS upon the Customer, advising 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 December 16, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing.

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 1429445, 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 Arbitration Notebook and Exhibits; Claimant's testimony; and as to formal/procedural requirements, also the representations of counsel.

### **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 1429445 from registration records maintained by the CRD for Claimant Ralph James Femminella (CRD Number 4191824) with the understanding that, pursuant to Notice to Members 04-16, Claimant Ralph James Femminella 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 finding of fact:

The claim, allegation, or information is false.

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

There was virtually no evidence to support the allegation in the CRD that Claimant refused/failed to execute an instruction to liquidate a holding. There was no contemporaneous complaint, despite evidence that the Customer and Claimant were in fairly regular contact, that the Customer kept apprised of his account including that he received account statements. The alleged instruction would have represented a stark departure from the Investment Policy Statement (“IPS”) prepared for, and signed by, the Customer, and from the Customer’s prior investment history, including prior to when the Customer moved his accounts to Claimant. In fact, the account was allocated more heavily toward equities before Claimant was involved than it was after his recommendations were implemented. The emails of the Customer, in addition to being hearsay and not subject to cross-examination, were inconsistent in the damages claimed and included demonstrably false statements regarding related accounts. On the other hand, Claimant testified that the instruction allegedly ignored was never given, that when confronted with this, the Customer lamented that he “should have” given the instruction (which the Panel acknowledged is also an out of court statement by a declarant not present for cross-examination), that he had no incentive not to execute such an instruction had it been given, and, indeed, he had executed a somewhat similar instruction from the Customer’s wife. While the Panel would have found contemporaneous contact notes helpful, Claimant was candid to concede that he did not do as well at routinely making those as he should have and that he had not located any. However, the documentary evidence that was admitted either corroborated Claimant’s testimony (including account statements, the IPS and the statements related to the Customer’s wife’s account) or did not undermine it (e.g. the correspondence from the Customer which suffered from internal inconsistencies and failed to explain things like the lack of a contemporaneous complaint about the alleged failure to execute and which expressed similar dissatisfaction with completely reasonable actions such as failing or refusing to get the firm to illegally “code” a taxable distribution as something other than that). While the evidence did not establish that the allegation was impossible, it abundantly established that it was “false.”

### **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

**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 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 with the Panel @ \$1,125.00/session	= \$	1,125.00
Pre-Hearing Conference: September 7, 2021                      1 session		
One (1) hearing session on expungement request @ \$1,125.00/session	= \$	1,125.00
Hearing: December 16, 2021                      1 session		
<b>Total Hearing Session Fees</b>	<b>= \$</b>	<b>2,250.00</b>

The Panel 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**

Will Murphy	-	Public Arbitrator, Presiding Chairperson
Isadora Velazquez-Rivas	-	Public Arbitrator
Gary A. Klein	-	Non-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.

**Concurring Arbitrators' Signatures**

***Will Murphy***

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Will Murphy  
Public Arbitrator, Presiding Chairperson

**12/19/2021**

\_\_\_\_\_  
Signature Date

***Isadora Velazquez-Rivas***

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Isadora Velazquez-Rivas  
Public Arbitrator

**12/20/2021**

\_\_\_\_\_  
Signature Date

***Gary A. Klein***

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Gary A. Klein  
Non-Public Arbitrator

**12/19/2021**

\_\_\_\_\_  
Signature Date

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December 20, 2021

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