

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Brian A. Matthews

Case Number: 21-00893

vs.

Respondents
Morgan Stanley Wealth Management
Timothy Francis Golier

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: Customer vs. Member and Associated Person

This matter proceeded pursuant to Rule 12800 of the Code of Arbitration Procedure (“Code”).

REPRESENTATION OF PARTIES

Claimant Brian A. Matthews appeared pro se.

For Respondents Morgan Stanley Wealth Management (“Morgan Stanley”) and Timothy Francis Golier (“Golier”): Irisa Chen, Esq., Morgan Stanley Wealth Management, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: April 5, 2021.

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

Brian A. Matthews signed the Submission Agreement: April 15, 2021.

Joint Statement of Answer filed by Respondents on or about: May 31, 2021.

Morgan Stanley signed the Submission Agreement: May 31, 2021.

Timothy Francis Golier signed the Submission Agreement: May 27, 2021

CASE SUMMARY

In the Statement of Claim and Amended Statement of Claim, Claimant asserted the following causes of action: breach of fiduciary duty; misrepresentation/non-disclosures; omission of facts; and suitability. The causes of action relate to a Liquidity Access Line loan.

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

RELIEF REQUESTED

In the Statement of Claim and Amended Statement of Claim, Claimant requested compensatory damages in the amount of \$35,000.00 for pre-payment penalty and \$15,000.00 for overpayment of interest.

In the Statement of Answer, Respondents requested that the Amended Statement of Claim be denied in its entirety; expungement of this matter from Respondent Golier's CRD records; and costs.

OTHER ISSUES CONSIDERED AND DECIDED

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

An Amended Statement of Claim filed on April 13, 2021 was not served on the Respondents or considered by the Arbitrator.

The Arbitrator conducted a recorded, telephonic on September 28, 2021, so the parties could present oral argument and evidence on Respondent Golier's request for expungement.

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

The Arbitrator reviewed Respondent Golier'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.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the pleadings, Respondents' exhibits, Claimant's credible testimony, testimonies of other witnesses, and Claimant's BrokerCheck® Report.

AWARD

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

1. Claimant's claims are denied in their entirety.
2. The Arbitrator recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2129068) from registration records maintained by the CRD for Respondent Timothy Francis Golier (CRD Number 149777) with the understanding that, pursuant to Notice to Members 04-16, Respondent Timothy Francis Golier 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 registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and 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 expungement is appropriate consistent with the provisions of FINRA Rule 2080. The documentary and testimonial evidence demonstrated that Timothy Frances Golier was not involved in recommending the fixed-rate loan, which carried a pre-payment penalty, about which the Claimant complains. Golier was not assigned to the Claimant's Financial Advisor's team until January, 2020, and the loan in question was closed in December, 2019. Golier testified credibly that he did not improperly recommend a fixed rate product and there is no documentary evidence which demonstrates that he was involved in the transaction when the loan was secured by the Claimant. At the hearing, the Claimant did not object to expungement, but took exception with the firm's disclosure procedures.

3. FINRA Dispute Resolution Services shall retain the \$600.00 filing fee that Claimant deposited previously.
4. Respondent Morgan Stanley is liable for and shall pay to Claimant \$300.00 to reimburse Claimant for one half of the filing fee previously paid to FINRA Dispute Resolution Services.
5. 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.*

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 persons at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent Morgan Stanley is assessed the following:

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

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:

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|---|---------------|
| One (1) hearing session on expungement request @ \$1,125.00/session | = \$ 1,125.00 |
| Hearing: September 28, 2021 1 session | |

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| Total Hearing Session Fees | = \$ 1,125.00 |
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The Arbitrator has assessed the total hearing session fees to Respondent Golier.

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

ARBITRATOR

Mary Julia O'Connell

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Sole 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.

Arbitrator's Signature

Mary Julia O'Connell

Mary Julia O'Connell
Sole Public Arbitrator

10/05/2021

Signature Date

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October 07, 2021

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