

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Richard Anthony Downer

Case Number: 21-01322

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 Richard Anthony Downer (“Claimant”): Zachary Morse, Esq., HLBS Law, Westminster, Colorado.

For Respondent Morgan Stanley (“Respondent”): Jeffrey P. Palmer, Esq., Greenberg Traurig, LLP, East Palo Alto, California.

CASE INFORMATION

Statement of Claim filed on or about: May 20, 2021.

Claimant signed the Submission Agreement: May 20, 2021.

Statement of Answer filed by Respondent on or about: July 13, 2021.

Respondent signed the Submission Agreement: July 19, 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 Numbers 1425942 and 1631811 from Claimant's CRD records, pursuant to FINRA Rule 2080(b)(1)(A), as the claim, allegation, or information is factually impossible or clearly erroneous;
2. Expungement of Occurrence Numbers 1425942 and 1631811 from Claimant's CRD records, pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false;
3. Deletion of all Disclosure Reporting Pages accompanying Occurrence Numbers 1425942 and 1631811; and
4. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested:

1. Any request for damages be denied; and
2. All costs and fees be assessed against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

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

On July 6, 2021, the parties agreed to proceed with a single arbitrator for this matter.

On September 13, 2021, Claimant advised that the customers in Occurrence Numbers 1425942 ("Ms. B") and 1631811 ("Mr. N"), collectively the "Customers," were served with the Statement of Claim and notice of the date and time of the expungement hearing. On September 20, 2021, Claimant filed an Affidavit confirming that the Customers were 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 December 1, 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.

Mr. N participated in the expungement hearing and opposed the expungement request.

Ms. B did not participate in the hearing.

The Arbitrator found that the Customers 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 occurrences in the CRD.

The Arbitrator also reviewed the settlement documentation related to Occurrence Numbers 1425942 and 1631811, considered the amount of payment made to any party to the settlements, and considered other relevant terms and conditions of the settlements. The Arbitrator noted that the settlements were not conditioned on any party to the settlements not

opposing the expungement request and that Claimant did not contribute to the settlement amounts.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: pleadings; exhibits; Claimant's testimony; and Mr. N'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:

1. The Arbitrator recommends the expungement of all references to Occurrence Numbers 1425942 and 1631811 from registration records maintained by the CRD for Claimant Richard Anthony Downer (CRD Number 2761869) with the understanding that, pursuant to Notice to Members 04-16, Claimant Richard Anthony Downer 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 finding of fact:

The claim, allegation, or information is false.

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

Occurrence Number 1425942

Ms. B's complaint was that Claimant misinformed her and failed to disclose information. Claimant's testimony during the hearing and exhibits presented indicate that Claimant made all required disclosures and provided Ms. B with the information available to him at the time. As new information was given to him, he provided that as well, even though it was not good news. Further, Claimant tried to obtain an exception from PIMCO, for the benefit of Ms. B, but was unsuccessful. Claimant testified that he did not participate in Respondent's decision to settle with Ms. B, nor did he contribute to the settlement. Respondent did not object to the expungement request. The Arbitrator recommends that Ms. B's complaint be expunged from Claimant's CRD records.

Occurrence Number 1631811

Mr. N's complaint alleges that Claimant misrepresented the terms of withdrawals from his Nationwide annuity. Claimant's testimony during the hearing and exhibits filed with FINRA indicate that Claimant spent significant time answering questions and informing Mr. N of the details of how annuities function, and specifically the terms of

the product Mr. N purchased. Mr. N testified at the expungement hearing, clearly illustrating his dissatisfaction with the terms of his investment, but not sufficient to prove wrongdoing by Claimant. Claimant testified he did not participate in Respondent's decision to settle the complaint, nor did he contribute. Respondent did not oppose the expungement. The Arbitrator finds Mr. N's allegations and version of events are not supported by the evidence and thus recommends expungement.

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

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 = \$ 1,600.00

**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(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 = \$ 2,000.00

Member Process Fee = \$ 3,850.00

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 @ \$1,150.00/session = \$ 1,150.00

Pre-Hearing Conference: August 31, 2021 1 session

One (1) hearing session on expungement request @ \$1,150.00/session = \$ 1,150.00

Hearing: December 1, 2021 1 session

Total Hearing Session Fees = \$ 2,300.00

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

Joyce L. Hurley

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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

Joyce L. Hurley

Joyce L. Hurley
Sole Public Arbitrator

12/14/2021

Signature Date

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December 14, 2021

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