

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant
Franklyn Edgerton Clarke

Case Number: 18-02860

vs.

Respondent
Morgan Stanley DW, Inc.

Hearing Site: Baltimore, Maryland

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant Franklyn Edgerton Clarke ("Claimant"): Robert W. Pearce, Robert Wayne Pearce, P.A., Boca Raton, Florida.

For Respondent Morgan Stanley DW Inc. ("Respondent"): Joseph A. Sack, Esq., Morgan Stanley, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: August 13, 2018.
Claimant signed the Submission Agreement: August 13, 2018.

Statement of Answer filed by Respondents on or about: October 2, 2018.
Respondent signed the Submission Agreement: August 30, 2018.

CASE SUMMARY

In the Statement of Claim, Claimant asserted a claim seeking expungement of customer complaints from his registration records maintained by the Central Registration Depository ("CRD") and defamation.

Unless specifically admitted in the Statement of Answer, Respondent took no position on Claimant's request for expungement denied the allegations made in the Statement of Claim and asserted various defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of three customer complaints, Occurrence Numbers 1185673, 1301371, and 1352091, from his CRD and \$1.00 in compensatory damages.

In the Statement of Answer, Respondent did not request any relief.

At the hearing, Claimant withdrew his request for \$1.00 in damages and claim for defamation.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator acknowledges that he has read the pleadings and other materials filed by the parties.

On or about May 13, 2019, Claimant filed a copy of the letters sent to the customers for Occurrence Numbers 1185673, 1301371, and 1352091, providing the customers with notice of the expungement hearing date and the option to participate in the expungement hearing. On or about June 24, 2019, Claimant filed a Status Report on Notice of Hearing to Customers, which included proof of delivery for the certified letters sent to two of the customers and confirmation of non-delivery for the third customer. Claimant also indicated that the two customers that received notice did not contact Claimant's counsel with their desire to appear.

The Arbitrator conducted a recorded telephonic, hearing on June 27, 2019 so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing but did not contest the request for expungement. None of the customers participated in the expungement hearing.

The Arbitrator determined that, based on Claimant's June 24, 2019 correspondence, the efforts to serve the third customer were sufficient.

The Arbitrator reviewed the BrokerCheck® Report for Claimant.

The Arbitrator noted that none of the underlying occurrences resulted in settlements, therefore, no settlement agreements were reviewed.

The Arbitrator found that Claimant did not previously file a claim requesting expungement of the same disclosure in the CRD.

In recommending expungement the Arbitrator relied upon the following documentary or other evidence: the broker-dealers' and Claimant's responses to the investor's letters/complaints.

AWARD

After considering the pleadings and 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:

The Arbitrator recommends the expungement of all Occurrence Numbers 1185673, 1301371, and 1352091 from registration records maintained by the CRD, for Claimant Franklyn Edgerton Clarke (CRD# 1960303), with the understanding that, pursuant to Notice to Members 04-16, Claimant Franklyn Edgerton Clarke 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:

In sworn testimony, Claimant indicated all three investors purchased variable annuities and as such, executed additional annuity documents acknowledging their acceptance and understanding. Specifically, these instruments impose a penalty for the early withdrawal of funds. And all three investors’ accounts were nondiscretionary. As such, the basis for their complaints/letters referenced losses that appeared to be self-inflicted. The allegations were false.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

FINRA Office of Dispute Resolution assessed a filing fee* for each claim:

Initial Claim Filing Fee	= \$ 50.00
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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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge	= \$ 150.00
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Discovery-Related Motion Fee

Fees apply for each decision rendered on a discovery-related motion.

One (1) decision on a discovery-related motion on the papers with one (1) arbitrator @ \$200.00/decision	= \$ 200.00
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Claimant submitted (1) discovery-related motion

Total Discovery-Related Motion Fees	= \$ 200.00
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The Arbitrator has assessed \$200.00 of the discovery-related motion fees to Claimant.

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(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session with a single arbitrator @ \$50.00/session	= \$	50.00
Pre-hearing conference: December 18, 2018	1 session	

One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing Date: June 27, 2019	1 session	

Total Hearing Session Fees	= \$	100.00
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The Arbitrator has assessed \$100.00 of the hearing session fees to Claimant.

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

ARBITRATOR

Richard E. Lauziere

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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

Richard E. Lauziere

Richard E. Lauziere
Sole Public Arbitrator

July 9, 2019

Signature Date

July 9, 2019

Date of Service (For FINRA Office of Dispute Resolution office use only)