

Award
FINRA Dispute Resolution

In the Matter of the Arbitration Between:

Claimant
Dennis Coral

Case Number: 15-02297

vs.

Respondent
Morgan Stanley & Co., LLC

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant Dennis Coral ("Coral"): Robert Wayne Pearce, Esq., Law Offices of Robert Wayne Pearce, Boca Raton, Florida.

For Respondent Morgan Stanley & Co., LLC ("Morgan Stanley"): Brian C. Hale, Esq., Morgan Stanley & Co., LLC, St. Petersburg, Florida.

CASE INFORMATION

Statement of Claim and Petition for Expungement filed on or about: September 2, 2015.
Dennis Coral signed the Submission Agreement: September 1, 2015.

Stipulation filed jointly by Claimant and Respondent Morgan Stanley on or about:
October 29, 2015.

First Amended Statement of Claim and Petition for Expungement filed on or about:
October 29, 2015.

Statement of Answer filed by Respondent Morgan Stanley on or about: November 4,
2015.

Respondent Morgan Stanley signed the Submission Agreement: November 4, 2015.

CASE SUMMARY

In the Statement of Claim, as amended, Claimant asserted that erroneous information appears on his records maintained by the Central Registration Depository ("CRD"). The cause of action relates to the presence of a customer complaint dated June 16, 2014, (Occurrence No. 1710007) on Claimant's CRD records. The complaint concerned alleged unauthorized trading of Puerto Rico bonds in a customer's account.

Respondent Morgan Stanley had no opposition to the First Amended Statement of Claim and Petition for Expungement filed by Claimant.

RELIEF REQUESTED

In the Statement of Claim, as amended, Claimant requested: expungement of all references to Occurrence No. 1710007 from Claimant's CRD records.

In its Answer, Respondent Morgan Stanley requested that any and all forum fees from the matter be assessed against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

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

In a Stipulation filed October 25, 2015, Claimant withdrew his claim for defamation and related damages against Respondent Morgan Stanley and filed his First Amended Statement of Claim and Petition for Expungement. Accordingly, the Arbitrator did not make any determination with respect to the claim for defamation.

The Arbitrator conducted a recorded in-person hearing on March 7, 2016, so the parties could present oral argument and evidence on Claimant's request for expungement. Respondent Morgan Stanley did not oppose the request for expungement or appear at the recorded in-person hearing. Prior to the hearing, Claimant served the non-party customer who filed the complaint of issue with a subpoena to appear and give testimony. The customer did not appear at the hearing or oppose the expungement request.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, the testimony and evidence presented at the recorded in-person hearing, and the post-hearing submissions (if any), 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 CRD Occurrence No. 1710007 from Claimant Coral's (CRD# 4561718) registration records maintained by the CRD, with the understanding that pursuant to Notice to Members 04-16, Claimant Coral 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 findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; and

The claim, allegation, or information is false.

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

The allegations of wrongdoing by the customer that Claimant, her financial advisor, engaged in “unauthorized trading” over a seven (7) year period, “April 2007 – April 2014,” that were reported by Respondent Morgan Stanley on Claimant’s CRD record were false allegations.

The Arbitrator conducted an in-person evidentiary hearing and received Claimant’s testimony and documentary evidence in support of his request for expungement on the grounds that the customer’s allegations to Respondent Morgan Stanley were false. The customer was subpoenaed by Claimant to appear and give testimony at the expungement hearing and failed to do so. A photocopy of the subpoena was issued by the Arbitrator for the customer’s appearance and evidence that the subpoena was served upon her is included in the record.

The evidence presented by Claimant demonstrates that the customer is a wealthy, experienced and sophisticated real estate and securities market investor with several accounts held at different brokerage firms since 1980. The customer’s reported annual income, net worth and liquid net worth were \$200,000.00, \$8,000,000.00 and \$2,000,000.00, respectively. The customer began her account relationship with Claimant at Respondent Morgan Stanley in or about April 2007, by transferring a portion of her liquid net worth to that brokerage with Claimant as her financial advisor. She opened three accounts at Respondent Morgan Stanley: two in the individual customer’s name, and one in the name of her charitable organization. One individual account was a commission-based account where she purchased and held a diversified portfolio of municipal bonds (the “Bond Account”). The other individual account was a fee-based account where she purchased and sold a large number of blue chip dividend-paying common stocks (the “Stock Account”).

The customer was mailed purchase and sale transaction confirmations and monthly account statements in connection with all three accounts for over seven years. In addition, Claimant met with her monthly at her personal residence and discussed all three of her accounts. At no time during the seven-year relationship did the customer ever complain to Claimant or anyone at Respondent Morgan Stanley about any “unauthorized trading” or any other misconduct in connection with the handling of her accounts at that brokerage firm.

On April 18, 2014, Claimant formally resigned from his employment at Respondent Morgan Stanley. Shortly thereafter, he became registered and associated with SunTrust Investment Services, Inc. (“SunTrust”). Claimant was not permitted to telephone and solicit clients upon his resignation from Respondent Morgan Stanley. He was only permitted to send out a postcard with his name and the address of his new employer to his former clients at Respondent Morgan Stanley and did so.

The customer wrote Respondent Morgan Stanley a letter dated April 19, 2014, and made it very clear to the company that she wanted checks representing the income, not a return of the principal, sent out to her. The customer did not complain about any “unauthorized trading” in her April 19, 2014, letter.

The customer never contacted Claimant at SunTrust or anywhere else subsequent to his resignation. Similarly, no one from Respondent Morgan Stanley contacted Claimant about the customer. Claimant was not advised of the customer’s claim which was sent to Respondent Morgan Stanley and, therefore, was not provided the opportunity to object to the claim or provide his position on the issue.

On June 14, 2014, the customer wrote a letter to a Morgan Stanley Complex Risk Officer, which Respondent Morgan Stanley treated as a written complaint by a client and disclosed on Claimant’s CRD record. In that letter, the customer complained:

[T]he problem is due to the sales of the bonds losing money, which I had not authorized. Without ever informing me when the bonds were sold, why or for how much, all I know is that the bonds were sold for a very low amount, losing a lot of money.

Thus, the customer did not complain about any unauthorized purchases of any bonds; rather, it appears she was complaining about the sales of unidentified bonds. It was subsequently discovered in this arbitration that the customer made a complaint about the sales of four Puerto Rico municipal bonds that occurred in January 2014, over two months before Claimant resigned from Respondent Morgan Stanley.

The customer did not file an arbitration claim. It appears that Respondent Morgan Stanley made a business decision and settled the dispute for a nominal amount two weeks later to avoid litigation expenses.

Contrary to the allegations in the June 14, 2014, letter, Claimant testified that all of the Puerto Rico bond purchases and sales were discussed with the customer prior to any transactions in her account and were duly authorized. Claimant testified that he met with her every month and, at the hearing, Claimant presented undisputed documentary evidence that the customer received timely confirmations and monthly statements reflecting all of the transactions in her account.

Claimant also testified about his practice of bringing a list of bonds available for purchase by the customer to his monthly meetings with her for her review and selection. He reviewed the account statements during his testimony and pointed out the dates of the individual purchases of the Puerto Rico municipal bonds that other municipal bond transactions occurred on the same dates about which the customer had no complaint. Indeed, the account statements reveal that the customer made the first purchase of a Puerto Rico bond in her account on April 1, 2010, and that on the same date she purchased Miami Dade County Florida School Board bonds and Metropolitan Transportation Authority New York Revenue bonds. Further, at the time of the second Puerto Rico bond transaction, July 10, 2012, the customer purchased a Metropolitan Atlantic Rapid Transportation bond. Moreover, on the same dates as the purchases of the

third and fourth Puerto Rico bond transactions, she sold Metropolitan ABE and JEA Florida bonds for a profit.

Claimant's testimony that the customer authorized the sales of the Puerto Rico bonds was both rational and credible. He testified that, at the time of the purchase, the customer selected "investment grade bonds with the highest yield." All of the bond purchases reflected in the account records were consistent with that testimony. Claimant testified that he first began discussing and recommending the sale of Puerto Rico bonds in September 2013 after the Puerto Rico credit market began its decline. He testified that at the time of the January 27, 2014, sales, it was clear that the Puerto Rico bonds were about to be downgraded by the ratings agencies to less than investment grade. At the hearing, Claimant introduced the three major credit rating agencies' reports that demonstrated, in less than two weeks, the Puerto Rico bonds were downgraded to "junk bond" status. He further testified that the value of the Puerto Rico bonds have continued to decline since they were sold.

"Unauthorized trading" is the type of activity that the customer could have easily detected and timely complained about if it truly occurred, and there is no evidence that the customer ever complained about any "unauthorized trading" prior to June 14, 2014, and then she only complained about "sales of the bonds losing money." The Respondent Morgan Stanley confirmations all state: "This transaction is conclusive and binding if not objected to in writing within 5 days of receiving this trade confirmation." The undisputed evidence is that the customer failed to make any timely objection and, therefore, her claims of "unauthorized trading" are false.

The customer had the opportunity to testify and substantiate her claim and failed to do so. Respondent Morgan Stanley reported the customer's complaint as it was required to, but stated affirmatively that it had no objection to the expungement in its Answer to the Statement of Claim.

All of Claimant's testimony is deemed credible and was consistent with the expected downgrade of Puerto Rico bonds at the time of the customer's initial complaint letter, which complained only about the sale of bonds at a loss. The follow-up complaint letter stating that the customer did not want to invest in Puerto Rico was inconsistent with the investment history of the account and the earlier complaint letter. This made the allegations subject to question.

While the settlement amount represents a significant percentage of the alleged out-of-pocket loss, the amount is deemed nominal in light of the cost of defending against an arbitration and is consistent with a business decision to keep a valued client happy.

The undersigned Arbitrator, in making his decision, affirmatively finds:

- a. Respondent Morgan Stanley's settlement agreement with the customer includes a provision stating that the customer released Respondent Morgan Stanley and all of its officers, agents and employees from any present or future liability.
- b. The amount paid to the customer under the settlement agreement was a small dollar amount generally regarded as a nuisance value.
- c. Claimant was not contacted with respect to the customer's complaint, was not a party to the settlement, and did not contribute in any way to the settlement amount.

- d. No party conditioned settlement upon any agreement not to oppose an expungement request.

In making the above findings, the Arbitrator reviewed and considered the totality of the pleadings and evidence presented by the parties, including but not limited to: Claimant's First Amended Statement of Claim and Petition for Expungement; Respondent Morgan Stanley's Statement of Answer; the parties' Stipulation; Claimant's BrokerCheck report; the customer's account opening documents; the customer's primary account year-end statements; the customer's other 2013 account year-end statements; the customer's Puerto Rico bond purchase confirmations; the customer's Puerto Rico bond sale confirmations; the customer's primary account statements with Puerto Rico transactions; the customer's complaint letters and settlement agreement, including the amounts paid to any party, and all other terms and conditions of the settlement; Puerto Rico bond rating history; and the subpoena to the customer and affidavit of service.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial Claim 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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as the member firm that employed Claimant at the time of the events giving rise to the dispute, Respondent Morgan Stanley is assessed the following:

Member Surcharge = \$ 1,900.00

Member Process Fee = \$ 3,750.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

March 8, 2016, adjournment by Claimant WAIVED

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) Hearing session on expungement request @ \$450.00/session = \$ 450.00

Hearing Date: March 7, 2016 1 session

Total Hearing Session Fees = \$ 450.00

The Arbitrator has assessed the total hearing session fees of \$450.00 for the expungement hearing to Claimant.

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

ARBITRATOR

Steven Gerard Goerke

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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



Steven Gerard Goerke
Sole Public Arbitrator

3-16-2016

Signature Date

March 16, 2016

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