

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JOSEPH VERRI, DAVID CLAYMAN
AND DAVID POULIN,

Plaintiffs,

v.

FINANCIAL INDUSTRY
REGULATORY AUTHORITY,

Defendant.

CIVIL ACTION NO.

COMPLAINT TO VACATE ARBITRATION AWARD

Plaintiffs Joseph Verri (“Mr. Verri”), David Clayman (“Mr. Clayman”) and David Poulin (“Mr. Poulin”) submit this Complaint against the Defendant Financial Industry Regulatory Authority (“FINRA”), and hereby state and allege as follows:

NATURE OF THE ACTION

1. Mr. Verri, Mr. Clayman and Mr. Poulin bring this action to vacate FINRA’s arbitration award pursuant to 9 U.S.C.A. § 10 due to the failure of FINRA to enforce its own rules, regulations and procedures.

2. As set forth in detail below, Mr. Verri, Mr. Clayman and Mr. Poulin are all registered representatives licensed to do business in the United States Securities Industry. FINRA failed to require an arbitration panel to hear evidence pertinent to the controversy at issue, namely the expungement of a statement of claim from the respective registrations of Mr. Verri, Mr. Clayman and Mr. Poulin which are on file with FINRA’s owned central licensing and registration system for the United States securities industry and its regulators.

3. FINRA's failure to follow its own rules, regulations, procedures and guidelines on expungement is fundamentally unfair to Mr. Verri, Mr. Clayman and Mr. Poulin and deprived them of a fair hearing.

4. As a result of FINRA's conduct, the Plaintiffs have been denied a fair opportunity to have their respective records expunged of a Statement of Claim that was withdrawn by the Claimants.

5. Accordingly, Plaintiffs are entitled to an Order vacating that portion of the arbitral award denying their request for expungement under 9 U.S.C.A. § 10(a)(3).

PARTIES

6. The plaintiff, Joseph Verri, is an individual residing in the Commonwealth of Massachusetts.

7. The plaintiff, David Clayman, is an individual residing in the Commonwealth of Massachusetts.

8. The plaintiff, David Poulin, is an individual residing in the Commonwealth of Massachusetts.

9. The defendant, Financial Industry Regulatory Authority, is the world's largest private sector provider of financial regulatory services. FINRA oversees the activities of more than three thousand eight hundred ninety-five (3,895) securities firms with approximately six hundred forty-one thousand seven hundred and sixty-one thousand (641,761) brokers.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.A. § 1331 because the plaintiffs seeks relief under federal law; specifically, the Federal Arbitration Act, 9 U.S.C.A. §§ 2 and 10. The Court also has diversity jurisdiction pursuant to 28 U.S.C.A. 1332.

11. The Court has personal jurisdiction over the Defendant because FINRA transacts business in the Commonwealth of Massachusetts. Also, FINRA has purposefully availed itself of the activities of this forum, and this Complaint arises out of those activities.

12. Venue is properly laid in this District pursuant to 28 U.S.C.A. §§ 1391 (a) and (c). The Defendant may be found in this District and a substantial part of the events giving rise to these claims have occurred in this District.

FACTUAL ALLEGATIONS

13. On or about April 1, 2015, three Claimants initiated a Statement of Claim with FINRA. The three Claimants included: i) David P. Farr, as Trustee of the David P. Farr 2008 Revocable Trusts, the George I. Farr 2011 Irrevocable Trust, the Norene Farr 2008 Revocable Trust, the George I. Farr Revocable Trust and Judith A. Farr Revocable Trust; ii) Norene Farr as Trustee of the David P. Farr 2008 Revocable Trusts, the George I. Farr 2011 Irrevocable Trust, and the Norene Farr 2008 Revocable Trust; and iii) George I. Farr, individually and as Trustee of the George I. Farr 2011 Irrevocable Trust, the Norene Farr 2008 Revocable Trust, the George I. Farr Revocable Trust and Judith A. Farr Revocable Trust (collectively referred to as the "Claimants"). A copy of the Statement of Claim is attached hereto as Exhibit "A".

14. The Claimants initiated the Statement of Claim naming Morgan Stanley & Co., LLC ("Morgan Stanley") as the sole Respondent.

15. In their Statement of Claim, the Claimants alleged: (a) breach of duty of care; (b) negligence; (c) breach of contract; (d) breach of the implied covenant of good faith and fair dealing; (e) breach of fiduciary duty; (f) breach of the duty of loyalty; (g) fraud; (h) churning; (i) product and strategy suitability; (j) failure to supervise; (k) unjust enrichment; and (l) violation of Massachusetts General laws chapters 93A and 110A.

16. During the relevant time period between January 2011 and November 2013, the Claimants held thirty-three (33) accounts at Morgan Stanley.

17. In their Statement of Claim, the Claimants did not seek to recover for any alleged investment losses that they suffered at Morgan Stanley. Rather, they sought as damages the difference between the returns in their accounts and that of the S&P 500 during the relevant time period.

18. During the relevant time period, the accounts at issue earned a net profit. Thus, the Claimants' theory was that although the accounts were profitable, the profit should have been greater.

19. In their Statement of Claim the Claimants alleged that the accounts were managed by a team of advisors known as the Bay Colony Group which was comprised of Mr. Verri (the lead advisor), Mr. Clayman (who had some involvement with certain investment recommendations) and Mr. Poulin (who indisputably had little involvement in the advice and management of the accounts).

20. On or about September 18, 2015, Morgan Stanley filed its answer to the Statement of Claim. A copy of the Answer is attached hereto as Exhibit "B".

21. In its Answer to the Statement of Claim, Morgan Stanley asserted among other things that:

- a. The Claimants were highly educated business executives who managed a multi-million dollar company and had decades of investment experience;
- b. The Claimants executed documentation with Morgan Stanley that expressly stated that they were sophisticated investors who were not relying solely upon their Morgan Stanley financial advisors with respect to the management of their accounts;
- c. The Claimants' claims were barred as a matter of law because investors are not entitled to recover hypothetical "lost profits." Rather, net out-of-pocket losses are the standard measure of damages in retail brokerage disputes;

- d. The Claimants received monthly statements, quarterly reports and other information regarding their accounts that detailed the investments they held and provided general asset allocation. It was only after there was a substantial rise in the S&P 500 that the Claimants in hindsight expressed a desire to have been more heavily allocated in equities;
- e. In their Statement of Claim the Claimants failed to identify any contractual language that Morgan Stanley or its financial advisors breached. Furthermore, the Claimants failed to allege any basis for their claim for breach of the covenant of good faith and fair dealing;
- f. The Claimants authorized and directed the execution of all transactions in the accounts; and
- g. The Claimants ordered, approved, participated in, or ratified the acts and transactions in dispute.

22. In its Answer to the Statement of Claim, Morgan Stanley denied all of the Claimants' allegations and requested that: (a) the Statement of Claim be dismissed in its entirety; (b) an order of expungement issue for Mr. Verri, Mr. Clayman and Mr. Poulin; and (c) all other relief that was just and proper.

23. A year after Morgan Stanley filed its Answer to the Statement of Claim, and after discovery had been exchanged, Claimants withdrew their claims with prejudice as part of a settlement that includes no payment from Morgan Stanley or the financial advisors.

24. No hearings were every conducted, no witnesses testified, and no experts were heard from.

25. On November 10, 2016, Morgan Stanley filed an Application for Expungement Recommendation and Request for Hearing. Morgan Stanley requested expungement for Mr. Verri,

Mr. Clayman and Mr. Poulin following the submission of supporting materials and a hearing. A copy of the Application for Expungement is attached hereto as Exhibit "C".

26. Morgan Stanley had a good faith basis for seeking expungement on behalf of Mr. Verri, Mr. Clayman and Mr. Poulin.

27. The FINRA Rules and Notice to members govern expungement. A copy of the Rules is attached hereto as Exhibit "D".

28. Specifically, FINRA Rule 2080 provides for expungement in four circumstances. Subsection (b)(1) of the Rule sets forth the first three grounds for expungement, only one of which needs to be satisfied. Subsection (b)(1) mandates expungement when:

- a. The claim, allegation or information is factually impossible or clearly erroneous;
- b. The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation or conversion of funds; or
- c. The claim, allegation or information is false.

29. Even if a FINRA panel declines to order expungement under Rule 2080 (b)(1), Subsection (b)(2) of Rule 2080 provides an additional basis for expungement.

30. Under FINRA Rule 2080 (b)(2), expungement relief may be granted when:

- a. The expungement relief and accompanying findings on which it is based are meritorious; and
- b. The expungement would have no material adverse effect on investor protection, the integrity of the CRD system or regulatory requirements.

31. FINRA's Office of Dispute Resolution Guide ("Guide") (Exhibit "E" hereto pg. 74) explains that under FINRA Rule 12805 entitled "Expungement of Customer Dispute Information", in settled cases where "a hearing on the merits has not been held, arbitrators must convene a hearing on

the record to specifically address expungement.” The Guide further provides that “the broker or firm requesting expungement must demonstrate to the arbitrators that the facts provide a basis for expungement under one of the grounds in Rule 2080.” (Exhibit “E” hereto pg. 74).

32. The FINRA Dispute Resolution Expungement Rules “are designed to ensure that arbitrators have the opportunity to consider the facts that support or weigh against a decision to recommend expungement....” (Exhibit “F” hereto pg. 13)

33. Therefore, the Guide states “[b]efore ruling on requests to recommend expungement of customer dispute information under Rule 2080, the panel must complete the following under Rule 12805:

- a. Hold a recorded hearing session (by telephone or in person) regarding the appropriateness of expungement;
- b. In cases involving settlements, review settlement documents and consider the amount of payments made to any party and any other terms and conditions of the settlement;
- c. Indicate in the arbitration award which of the Rule 2080 grounds for expungement serves as a basis for its expungement order and provide a brief written explanation of the reasons for the panel’s finding; and
- d. Assess all forum fees for hearing sessions in which the sole topic is the determination of the appropriateness of expungement against the parties requesting expungement relief.

(Exhibit “E” pg. 74).

34. The Federal Arbitration Act recognizes the fundamental importance that parties participating in arbitrations have an opportunity to be heard. Accordingly, 9 U.S.C.A §10 provides that a court may order vacating an award “where the arbitrators were guilty of misconduct . . . in refusing to hear evidence pertinent and material to the controversy.”

35. The FINRA arbitration panel improperly denied Morgan Stanley's request for a hearing and expungement in clear contravention of the FINRA Rules and Guidance.

36. The FINRA arbitration panel failed to "consider the facts that support or weigh against a decision to recommend expungement" or seek "all information necessary to make an informed and appropriate recommendation on expungement."

37. The FINRA arbitration panel failed to convene the required hearing in violation of Rule 12805.

38. The FINRA arbitration panel simply and without basis, denied the request for expungement based on nothing more than the pleadings and the application despite Morgan Stanley's application stating that it had additional supporting materials to submit and requesting the required hearing.

39. By failing and/or refusing to receive evidence and convene the required hearing to reconsider Morgan Stanley's expungement request, the Panel undermined the FINRA arbitration process and denied Mr. Verri, Mr. Clayman and Mr. Poulin the basic fairness that FINRA arbitration is designed to provide.

40. The receipt of evidence and holding of a hearing is a fundamental part of the arbitration process designed to ensure fair and reasoned decisions based on all available evidence.

41. The Federal Arbitration Act allows the vacating of an award where arbitrators try to circumvent such process by "refusing to hear evidence pertinent and material to the controversy."

42. The FINRA arbitration panel's award here—after failing to follow required procedure—was uninformed by the evidence and should be reconsidered.

43. As a result of the Award, the Statement of Claim remains on the three financial advisors' CRDs even though it has no meaningful investor protection or regulatory value.

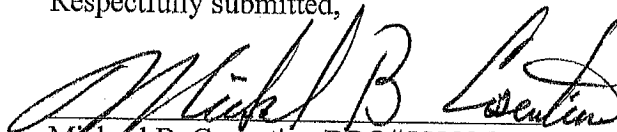
REQUESTED RELIEF

WHEREFORE, Plaintiffs Joseph Verri, David Clayman and David Poulin, respectfully request that the Court:

1. Enter an Order vacating the award issued by the arbitration panel based on the Panel's refusal to hear evidence pertinent and material to the controversy pursuant to 9 U.S.C.A. §10(a)(3);
2. Enter an Order re-opening the FINRA arbitration matter entitled "David P. Farr, et. al. v. Morgan Stanley & Co., LLC," FINRA No.15-00774;
3. Enter an Order requiring FINRA to convene a new arbitration panel to hear evidence and take argument concerning the expungement of the Statement of Claim in FINRA Arbitration No.15-00774.
4. Award the Plaintiffs their reasonable attorney's fees and costs ; and
5. Award such further relief as the Court deems just and proper.

Respectfully submitted,

By:



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