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| <b>Morgan Stanley v Financial Indus. Regulatory Auth.<br/>(FINRA), Inc.</b>                                                                                                                                                             |
| 2018 NY Slip Op 32490(U)                                                                                                                                                                                                                |
| October 1, 2018                                                                                                                                                                                                                         |
| Supreme Court, New York County                                                                                                                                                                                                          |
| Docket Number: 654466/2018                                                                                                                                                                                                              |
| Judge: Carol R. Edmead                                                                                                                                                                                                                  |
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| This opinion is uncorrected and not selected for official<br>publication.                                                                                                                                                               |

At IAS Part \_\_\_\_ of the Supreme Court of the State of New York, held in and for the County of New York, at the Supreme Court, 60 Centre Street, New York, New York, on the 1<sup>st</sup> day of October, 2018.

PRESENT:

HON. CAROL R. EDMOND  
HON: \_\_\_\_\_ J.S.C.  
JUSTICE.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

----- X  
MORGAN STANLEY,

Petitioner,

v.

FINANCIAL INDUSTRY REGULATORY  
AUTHORITY (FINRA), INC.,

Nominal Respondent.  
----- X

Index No. 654466/2018

**DECISION AND ORDER**

Petitioner Morgan Stanley ("Petitioner" or "MSSB"), by its attorneys, Bressler, Amery & Ross, P.C., has duly applied for an Order pursuant to CPLR § 7510 to confirm the arbitrator's Awards in two arbitrations before the Financial Industry Regulatory Authority ("FINRA"), captioned *Carolyn Hunt-Monro v. RBC Capital Markets, LLC, Robert Alfred Dennison and Morgan Stanley*, FINRA Dispute Resolution Arbitration No. 16-00101 and *John Barry Glenn and Nancy P. Glenn v. RBC Capital Markets, LLC, Morgan Stanley and Robert A. Dennison*, FINRA Dispute Resolution Arbitration No. 16-00647 (the "FINRA Arbitrations").

Upon reading and filing the following papers submitted to the Court, including the Petition to Confirm an Arbitration Awards Pursuant to CPLR §7510, the Affirmation of David I. Hantman, Esq., with Exhibits A and B annexed thereto, which include a copy of the FINRA arbitration panels' Awards recommending expungement of these matters from Robert Alfred Dennison's Central Registration Depository ("CRD") and FINRA's letters to Petitioner dated August 16 and August 30, 2018, respectively, waiving the obligation under FINRA Rule 2080 to name FINRA

as a party in this proceeding and said application having regularly come on to be heard, and after due deliberation having been had thereon,

NOW, upon the application of Bressler, Amery & Ross, P.C., attorneys for Petitioner, it is hereby

ORDERED that the Petition is hereby granted solely to that portion of the arbitrators' Awards in the FINRA Arbitrations recommending expungement, and are confirmed consistent with the below:

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

- I. The Panel recommends the expungement of all references to the above-captioned arbitration, occurrence number 1863077, from registration records maintained by the CRD, for Respondent Robert Alfred Dennison (CRD# 2674594), with the understanding that, pursuant to Notice to Members 04-16, Respondent Robert Alfred Dennison 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, the Panel has made the following Rule 2080 affirmative findings of fact:

- the claim, allegation, or information is factually impossible or clearly erroneous.

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

The evidence produced, the testimony of Dennison and all the documents produced allowed the Panel to determine that the claim, allegation or information is clearly erroneous. Claimant filed an Amended Statement of Claim against RBC, Morgan Stanley, and Dennison seeking to recover losses allegedly incurred in connection with the sale of Puerto Rico bonds. The claim seeks to paint a picture of an uninformed and disengaged investor who relinquished all control over her accounts to her financial advisor, Dennison. In addition, Claimant alleges that Dennison urged her to purchase Puerto Rico bonds and advised her to hold these bonds when the market and the bonds turned down.

Based on Dennison's testimony, the Panel found Dennison did not suggest that Claimant hold the Puerto Rico bonds and at some point he suggested that she divest herself of some of those bonds. Further, the Panel found that any overconcentration in Claimant's accounts was of her own making.

The Panel has determined that there would be no meaningful investor protection or regulatory value affected by this expungement.

- II. The Panel recommends the expungement of all references to the above-captioned arbitration from registration records maintained by the CRD, for Respondent Robert A. Dennison (CRD #2674594), with the understanding that, pursuant to Notice to Members 04-16, Respondent Robert A. Dennison 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, the Panel 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 Panel has made the above Rule 2080 finding based on the following reasons:

The evidence clearly established that (1) John Barry Glenn and Nancy P. Glenn were experienced equity and bond investors who advised Robert A. Dennison in 2009 that they had a "moderate" risk tolerance and sought a 7% average annual yield; (2) Puerto Rico bonds were only one of several options Robert A. Dennison discussed with John Barry Glenn and Nancy P. Glenn; (3) each decision to invest in Puerto Rico bonds, all but one of which were of investment grade when purchased, was made by John Barry Glenn and Nancy P. Glenn with full knowledge of the risks involved; (4) at no time did John Barry Glenn and Nancy P. Glenn's investments in Puerto Rico bonds exceed 17% of their portfolio; and (5) after August 2013, Robert A. Dennison counseled John Barry Glenn and Nancy P. Glenn that they should consider reducing their investments in Puerto Rico bonds.

The Panel unanimously concludes that the principal assertion underlying the First Amended Statement of Claim — that "This enormous concentration of Puerto Rico bonds in John Barry Glenn and Nancy P.

Glenn's accounts was unsuitable in light of their risk tolerance and financial profile and resulted in the overconcentration of their portfolio in the bonds" — is clearly erroneous and false. The Puerto Rico investments were suitable given John Barry Glenn and Nancy P. Glenn's objectives and risk tolerance. John Barry Glenn and Nancy P. Glenn's portfolios were diversified and were not overly concentrated in Puerto Rico bonds, and all investment decisions were made by them with full knowledge of the risks involved.

III. All other relief requests are denied.

It is ORDERED that all references to *Carolyn Hunt-Monro v. RBC Capital Markets, LLC, Robert Alfred Dennison and Morgan Stanley*, FINRA Dispute Resolution Arbitration No. 16-00101 and *John Barry Glenn and Nancy P. Glenn v. RBC Capital Markets, LLC, Morgan Stanley and Robert A. Dennison*, FINRA Dispute Resolution Arbitration No. 16-00647, be expunged from the CRD records of Robert Alfred Dennison (CRD #2674594).

Enter,



**HON. CAROL R. EDMOND**  
J.S.C.