

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

Trial Court of the Commonwealth
Superior Court Department
Civil Action No.

CHRISTOPHER J. COWANS
Plaintiff/Petitioner

v.

MORGAN STANLEY DW, INC., MORGAN
STANLEY & CO., LLC, and MORGAN
STANLEY SMITH BARNEY, LLC
Defendants/Respondents

3/2/2022

**PETITION OF PLAINTIFF/PETITIONER CHRISTOPHER J. COWANS TO VACATE
ARBITRATION AWARD**

PARTIES AND JURISDICTION

1. The Plaintiff/Petitioner, Christopher Cowans, is an individual residing in Beverly, Essex County, Massachusetts, and may be served for all purposes via his undersigned counsel, Seth I. Robinson, Robinson Law, 1135 Heights, Blvd., Houston, TX 77008.

2. The Defendant/Respondent, Morgan Stanley DW, Inc. is a foreign corporation with a registered agent of CT Corporation System, 155 Federal Street, Ste. 700, Boston, MA 02110.

3. The Defendant/Respondent, Morgan Stanley & Co., LLC is a foreign corporation with a registered agent of CT Corporation System, 155 Federal Street, Ste. 700, Boston, MA 02110.

4. The Defendant/Respondent, Morgan Stanley Smith Barney, LLC is a foreign corporation with a registered agent of CT Corporation System, 155 Federal Street, Ste. 700, Boston, MA 02110.

5. Plaintiff/Petitioner Christopher J. Cowans (“Petitioner” or “Cowans”) files this Petition to Vacate an Arbitration Award rendered through the Financial Industry Regulatory Authority (“FINRA”) arbitration forum, and by necessity names Defendants/Respondents Morgan Stanley DW, Inc., Morgan Stanley & Co., LLC, and Morgan Stanley Smith Barney, LLC (collectively, “Respondents”) whereas Respondents did not oppose the relief sought by Petitioner in the arbitration for which vacation of the award is being sought and the wrongdoing complained of herein is that of FINRA.

6. Jurisdiction is proper whereas the Superior Court is vested with statutory authority to confirm and vacate arbitration awards and venue properly lies with this Court whereas the subject arbitration hearing took place in Boston, Suffolk County, Massachusetts.

RELEVANT BACKGROUND

7. Petitioner, a licensed investment adviser, commenced a single arbitrator FINRA arbitration against the Respondents seeking expungement of certain disclosures from his Central Registration Depository or “CRD.” *A copy of the Statement of Claim is annexed hereto as Exhibit “A.”*

8. Respondents answered the Petitioner’s Statement of Claim setting forth no opposition of the disclosures from Petitioner’s CRD and no position concerning the substantive allegations of Petitioner’s allegations relating to the subject customer claims. *A copy of the Answer is annexed hereto as Exhibit “B.”*

9. During the arbitrator selection process, Petitioner submitted his ranking in the following order: 1) Michael Anciello; 2) David Ellis; and 3) Robert Ambrogi. *A copy of the Arbitrator Ranking is annexed hereto as Exhibit "C."*

10. FINRA, however, in breach of its own rules, policies and procedures, appointed Petitioner's third-ranked arbitrator, Robert Ambrogi, as the single arbitrator to hear Petitioner's case and an award entered post-hearing denying the expungements. *A copy of the Award is annexed hereto as Exhibit "D."*

11. By serving as single arbitrator for the Claimant's case notwithstanding his ranking as third, Petitioner was denied the fundamental right under his arbitration agreement to the arbitrator selection process granted by the FINRA arbitration rules and forum. Accordingly, the arbitrator misbehaved to the prejudice of the Petitioner and/or exceeded his powers or so imperfectly executed them that a mutual, final, and definite award was not made and the Award denying expungement should be vacated in accordance with the Federal Arbitration Act, 9 U.S.C. § 10(a) (the "FAA")¹.

12. FINRA itself recently acknowledged the problematic nature of its arbitrator selection process when on February 18, 2022, it announced the hiring of an independent law firm to review FINRA's compliance with its rules, policies and procedures for arbitrator selection responsive to vacatur of a FINRA award arbitration award in Atlanta. *See FINRA*

¹ The sale of securities has been held to involve interstate commerce. *See id.*; *Williams v. Cigna Fin. Advisors, Inc.*, 56 F.3d 656, 659 (5th Cir.1995); *Eurocapital Group., Ltd. v. Goldman Sachs & Co.*, 17 S.W.3d 426, 430 (Tex.App.-Houston [1st Dist.] 2000, no pet.) (recognizing that account agreement concerning sale of securities involved interstate commerce). this matter involves interstate commerce via the subject matter relating to sale of securities and therefore this court may apply the Federal Arbitration Act when reviewing this matter.

News Release at <https://www.finra.org/media-center/newsreleases/2022/finra-hires-firm-conduct-independent-review-arbitrator-selection>.

13. The Supreme Court has reiterated that the principal purpose of the FAA is to assure contracting parties that the terms of their private arbitration agreements will be enforced. See AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 344, 131 S. Ct. 1740, 1748, 179 L. Ed. 2d 742 (2011).

14. FINRA, as has become an unfortunate custom and practice for the forum, disregarded its own its own rules and procedures in the case of Petitioner's arbitration case, and denied Petitioner Christopher Cowans the right to choose his arbitrator pursuant to the terms of his arbitration agreement with the Respondents.

WHEREFORE, Petitioner Christopher J. Cowans moves the Court to vacate the arbitration award in its entirety.

Respectfully submitted:

/s/ Seth I. Robinson

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