

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION

MORGAN STANLEY SMITH BARNEY LLC,

Petitioner,

v.

ELIZABETH A. BONDI,

Respondent.

Index No.: \_\_\_\_\_

**PETITION TO VACATE  
ARBITRATION AWARD**

Petitioner Morgan Stanley Smith Barney LLC (“Petitioner” or “Morgan Stanley”) by and through its attorneys, Greenberg Traurig, LLP, hereby petitions this Court, pursuant to 9 U.S.C. § 10(a) and CPLR 7511, for the entry of an Order vacating the award issued on October 21, 2021 (the “Award”)<sup>1</sup> rendered in the arbitration entitled *Elizabeth A. Bondi v. Morgan Stanley Smith Barney LLC*, FINRA Dispute Resolution No. 20-01834 (the “Arbitration”), and avers as follows:

**JURISDICTION AND VENUE**

1. Jurisdiction over Respondent is proper pursuant to CPLR §§ 302(a) and 7502 in that she transacted business in New York by agreeing to participate in the arbitration at issue here, and thereafter participated in arbitration hearing sessions in this state.

2. Venue is proper pursuant to CPLR 7502(a) in that the hearing sessions of the Arbitration at issue were held in New York County.

**THE PARTIES**

3. Petitioner is a limited liability company organized under the laws of Delaware with its principal place of business in New York, New York.

---

<sup>1</sup> A true and correct copy of the Award is annexed as Exhibit 1 to the Affirmation of Alan S. Brodherson, Esq. (cited herein as “Brodherson Aff., Ex. 1” or “Ex. 1”) filed simultaneously with this Petition to Vacate Arbitration Award and accompanying Memorandum of Law.

4. Elizabeth A. Bondi is an individual residing in Brooklyn, New York. She is a former employee of Morgan Stanley.

**FACTUAL BACKGROUND AND THE UNDERLYING ARBITRATION**

5. On March 5, 2019, pursuant to the Financial Industry Regulatory Authority's ("FINRA's") mandatory reporting requirements, Morgan Stanley filed a Form U5 disclosing that Ms. Bondi had been "Discharged" on February 4, 2019, for "Concerns that the representative [Ms. Bondi] entered inaccurate information into the Firm's systems related to two fraudulent wire disbursements requested by a third-party."

6. On June 10, 2020, Ms. Bondi filed a Statement of Claim ("SOC") with FINRA's Office of Dispute Resolution, "seeking \$1 in damages and for a declaration that she is entitled to expunge termination disclosures that are defamatory in nature." To support her claim for expungement, Ms. Bondi alleged the Form U5 disclosures were "false and defamatory," and she requested the disclosures be removed from her Form U5.

7. By seeking damages of \$1 and expungement, Ms. Bondi avoided a larger filing fee. Under FINRA Rule 13900, if the amount of claimed damages is between \$.01 to \$1,000, the filing fee is \$50. As the amount of claimed damages increases, the amount of the filing fee increases. Significantly, if the amount of claimed damages is "Non-Monetary/Not Specified" the filing fee is \$1,600.

8. By seeking damages of \$1, Ms. Bondi was also able to utilize FINRA's Special Proceedings for simplified cases, including the appointment of only one arbitrator, instead of three. Under FINRA Rule 13401, entitled "Number of Arbitrators," if the "amount of a claim is \$50,000 or less, exclusive of interest and expenses, the panel will consist of one arbitrator and the claim is subject to the simplified arbitration procedures under Rule 13800." If the amount of claim "is

unspecified, or if the claim does not request money damages, the panel will consist of three arbitrators....”

9. Based on the allegations in the SOC, the Arbitration was administered under the Special Proceeding option for simplified cases by one arbitrator and occurred over the course of two (2) days – October 6 and October 7, 2021,

10. During the Arbitration, Ms. Bondi attempted to prove the Form U5 disclosures were false. However, during cross examination, Ms. Bondi conceded that she had in fact entered “inaccurate information” into Morgan Stanley’s systems:

MR. BRODHERSON: So...you explained that you mistakenly omitted the reference to [the broker who supposedly confirmed the wire transfers], and that you put the wrong date, March 7 of 2017.

MS. BONDI: Yes. That's correct.

11. Ms. Bondi was the only witness in the Arbitration. After she testified, Ms. Bondi rested her case and Morgan Stanley did not call any witnesses.

12. During closing arguments, Ms. Bondi’s counsel reiterated the limited purpose of her claim:

What’s – what’s Bondi’s motive? She brings a case for *expungement* and \$1 damages? That – that’s – that’s a motive? She’s trying to clear her name.

13. After the close of evidence and after closing arguments, the arbitrator proceeded to ask Ms. Bondi questions of his own. After approximately 30 minutes of examination, during which Ms. Bondi admitted that she had in fact recorded inaccurate information into the Firm’s systems with respect to two wire transfers, the following additional exchange occurred:

MR. CARACCIOLO: ...So speaking of black and white, [The U5.] Uh, whoever wrote this -- good thing they didn't write the U.S. Constitution because as bad as our constitution is, you have the right to bear arms. [inaudible] okay.

Here's what. "Concerns that a representative" -- that's you -- "entered inaccurate information." That -- that I believe is true and I believe "entered inaccurate information" is *correct and accurate*.

\*\*\*

So here's what I'm going to -- I want you to know what's going on with me. Everything -- and I agree with [Morgan Stanley's] counsel. *Everything in this statement is absolutely correct. It is.*

There -- *there's nothing that's incorrect about it. I don't know if -- if that's enough to -- to terminate.* It may or may not be. But that's -- there was this big concern about the U5. It is a real concern.

MS. BONDI: Right.

MR. CARACCIOLO: *This U5 is accurate.* Because something is accurate doesn't mean it stands. It may stand. It may not stand. Okay. That's what -- what I'm going to try to do. That -- that part of my job is to -- to weigh this.

And it's not an easy -- it's not an easy weight. All right. Now, my one question to you about the U5, *should inaccurate information cause someone to be fired?* What do you think?

MS. BONDI: Well, I guess depending on --

MR. CARACCIOLO: No. You. You. Do you think --

MS. BONDI: For me? No. I don't think I should have been fired.

MR. CARACCIOLO: Do you think that this -- this type of inaccurate information should cause your term- -- should have caused your termination?

MS. BONDI: No. I should have got a letter of reprimand like [the broker] because I never had anything on my file.

MR. CARACCIOLO: All right. Good....

14. The Arbitrator then proceeded to ask Ms. Bondi additional questions about whether she had received all her employment benefits including disability, vacation, and sick days. Ms. Bondi conceded that she had.

15. The Arbitrator then asked counsel to restate their respective claims and the amount of damages sought, if any. He specifically turned to Ms. Bondi's counsel and stated, "If you're – you're claiming something more than \$1, uh, I need somethings that's [inaudible] all right."

16. At that point, Ms. Bondi's counsel for the first time requested \$50,000 in damages and \$13,000 in attorneys' fees – \$8,000 for this expungement proceeding, and \$5,000 for legal services in connection with a prior FINRA investigation. Significantly, this was the first time that Ms. Bondi's counsel ever asked for any damages whatsoever that were in excess of \$1.00.

17. Morgan Stanley immediately objected to this proposed amendment to increase damages from \$1 to \$50,000, which was literally at the "last second" and was not based on any cause of action alleged in the Statement of Claim:

MR. BRODHERSON: Mr. Chairman, I have a very serious issue.

MR. CARACCIOLO: Go ahead.

MR. BRODHERSON: In the statement of claim on Page 8 wherefore claimant Elizabeth A. Bondi respectfully requests that the arbitrator issue an award for damages in the amount of \$1 --

MR. CARACCIOLO: Right.

MR. BRODHERSON: -- and ordering the expungement of all references. And then for costs, expenses, and attorney's fees.

Let's go back to the damages of \$1. Yes, we recognize that sometimes over the course of proceeding, the precise calculation changes. But going from \$1 to \$50,000 is absolutely trying to blindside us.

*If there had been a request for \$50,000 or \$5,000 in damages or anything more than the \$1 which was necessary to avoid the imposition of higher forum fees, you're darn right we would have brought witnesses in here. I said to you before that we didn't have a dog in this fight because the only real issue was expungement.*

Now we're being told, oh no. We want \$50,000 in damages and *there has to be a legal claim associated with the claim for damages*. The only thing that's been -- they don't have a wrongful termination claim. They never made a wrongful termination claim. *Ms. Bondi never once said, I was wrongfully terminated and I want to be compensated for it.*

***The only claim pending is that claim for expungement based upon the -- the allegedly defamatory nature of the language. That's the sole issue.***

Had this ever been a wrongful term case in which there were requests for damages, you're darn tooting we would have had witnesses, and in that case, we even would have waived the legal privilege so that you could have heard what actually happened at the SIU investigation.

***But to allow [Ms. Bondi's counsel] to take advantage of the system by asserting a claim for \$1 and \$1 only so that until this very moment we're under the impression that this is still truly just an expungement case and then for him to say, oh. Well, award \$50,000. That is absolutely a miscarriage of justice.***

And I'll go back to *Rosenberg vs. MetLife*. The whole point we were here is the defamatory nature of the findings. Well, you are prohibited from New York State - well, I will not say prohibited. ***New York State law says that there is no claim available for damages for defamation.***

And he doesn't get to avoid it by saying, well. But it's not a defamation claim because we know we don't have a defamation claim. It's an expungement claim. So that is my response to the request for damages.

And we have briefed extensively, um -- well, I shouldn't say extensively since it's only a three or four-page brief but that with respect to the request for attorney's fees, there is no basis to award attorney's fees.

And even the arbitrator training manuals say that, that absent a statutory basis or a contractual basis, unless both sides agree to -- to submit the issue to you, that the issue isn't before you.

Um, and my last point is you yourself has said that when you look at the termination comment, the language -- the -- the words seem accurate. And again, this is not a wrongful termination claim. Had this been posited as a wrongful termination claim, we would have tried a different case, sir. We would have.

### **THE ARBITRATION AWARD**

18. On October 21, 2021, the arbitrator issued the Award. In the Award, the Arbitrator expressly acknowledged that Ms. Bondi only asserted one cause of action: ***expungement***.

19. Despite the fact that Ms. Bondi never sought to recover based on a claim for defamation or wrongful termination, and notwithstanding the Arbitrator's specific finding that the Form U5 was accurate in all respects, the Arbitrator awarded Ms. Bondi: (1) the sum of \$50,000 in compensatory damages, (2) pre-judgment interest at the rate of 9% per annum from the date of

Ms. Bondi's employment termination until date of payment, (3) \$13,000 in attorneys' fees, and (4) \$25.00 for the non-refundable portion of the filing fee.

20. Among other findings, the arbitrator ruled:

5. The Arbitrator recommends the expungement of the Reason for Termination and Termination Explanation in Section 3 of Elizabeth A. Bond's (CRD Number 1547310) Form U5 filed by Morgan Stanley (CRD Number 149777) on March 5, 2019 and maintained by the CRD. The Reason for Termination shall be changed to "Voluntary" and the Termination Explanation shall be deleted in its entirety and should appear blank. ...

The Arbitrator recommends expungement based on the defamatory nature of the information. ...

(Award at p. 2.)

**THE AWARD MUST BE VACATED.**

21. There is simply no legal basis for the Award and it is "totally irrational." Ms. Bondi did not assert a claim for defamation, wrongful termination, or any other cause of action that would support an award of damages. In fact, the Award contains no basis whatsoever – no underlying cause of action at all – to support an award for damages of any kind to Ms. Bondi. The Award should be vacated for this reason alone.

22. The arbitrator manifestly disregarded the law by effectively holding Morgan Stanley liable for defamation based on disclosures that the arbitrator found to be "absolutely accurate." Under well-established law that Morgan Stanley presented to the arbitrator, truth is an absolute defense to defamation, and Morgan Stanley cannot be held liable for damages based on truthful statements. The arbitrator chose to ignore this law and instead held Morgan Stanley liable for making "defamatory" disclosures even though they were, by his own admission, "absolutely accurate." These contradictory findings are in manifest disregard of the law and cannot be reconciled.

23. The arbitrator also manifestly disregarded the law by effectively holding Morgan Stanley liable for defamation based on disclosures that are “absolutely privileged.” Statements that are filed with FINRA in accordance with FINRA’s mandatory reporting requirements are privileged, and this “absolute” privilege precludes an award of monetary damages of any kind arising from statements made in connection with FINRA’s regulatory filings. *Rosenberg v. Metlife*, 8 N.Y. 3d 359, 368 (2007). The law on absolute privilege applicable in this matter was clearly presented to the arbitrator.

24. The Award violates well-defined and explicit public policy. The public policies at issue here – FINRA regulatory reporting obligations – have been deemed so compelling that the Court of Appeals created an absolute privilege for statements made in connection with those reporting obligations. This Award, if permitted to stand, would eviscerate that policy and, in fact, presents the very dangers that led to the Court of Appeals to afford an absolute privilege.

25. The arbitrator acted outside the scope of his authority by encouraging and then awarding damages based on a supposed claim for wrongful termination which had never been pled. Ms. Bondi never asserted a claim for wrongful termination, and an arbitrator acts outside the scope of his authority by awarding relief on claims that were never pled and never submitted to the arbitrator.

26. Finally, the arbitrator exceeded his authority and manifestly disregarded the law by awarding attorneys’ fees. Morgan Stanley never agreed to submit the issue of attorneys’ fees to the arbitrator, and therefore the arbitrator had no power or authority to make an award for attorneys’ fees.



**REQUEST FOR RELIEF**

WHEREFORE, Morgan Stanley respectfully requests an order pursuant to 9 U.S.C. §10(a) and CPLR 7511 vacating the Award in the Arbitration between Petitioner and Respondent (FINRA Dispute Resolution No. 20-01834).

Dated: New York, New York  
November 19, 2021

GREENBERG TRAURIG, LLP

By: /s/ Toby S. Soli  
Toby S. Soli  
One Vanderbilt Avenue  
New York, New York 10280  
445 Hamilton Ave.  
White Plains, New York 10601  
Tel: (212) 801-9200  
*Attorneys for Petitioner*