

**AWARD**  
FINRA Office of DISPUTE RESOLUTION

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CASE #: [REDACTED]  
[REDACTED] (Claimant) vs. H. Beck, Inc. and UBS Financial Services Inc.  
(Respondents)

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**REPRESENTATION OF PARTIES:**

For Claimant [REDACTED]: Owen Harnett, Esq., AdvisorLaw, LLC, Broomfield, Colorado.

For Respondent H. Beck, Inc.: Benjamin Cooper, Esq., H. Beck, Inc., Bethesda, Maryland.

For Respondent UBS Financial Services Inc. (UBS): William Mac Montgomery, Esq., Keesal, Young & Logan, San Francisco, California.

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**NATURE OF DISPUTE:** Associated Person vs. Members

Statement of Claim filed on or about: October 19, 2016.

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**CASE SUMMARY:** In the Statement of Claim, Claimant asserted a claim seeking expungement of customer dispute occurrence numbers [REDACTED] and [REDACTED] ("Underlying Claims") from his Central Registration Depository ("CRD") records.

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**RELIEF REQUESTED:**

In the Statement of Claim, Claimant requested:

1. Expungement of occurrence numbers [REDACTED], [REDACTED], and [REDACTED] from his CRD record pursuant to FINRA Rule 2080(b)(1)(A) finding the claim, allegation or information is factually impossible or clearly erroneous;
  2. Expungement of the Underlying Claims from his CRD record pursuant to FINRA Rule 2080(b)(1)(B) finding the Claimant was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation or conversion of funds;
  3. Expungement of occurrence numbers [REDACTED], [REDACTED], and [REDACTED] from his CRD record pursuant to FINRA Rule 2080(b)(1)(C) finding the claim, allegation or information is false.
  4. An award of damages in the amount of \$1.00 for Respondents' part in contributing to Claimant's injury; and
  5. Any and all other relief that the Arbitrator deems just and equitable.
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**AWARD:** The Arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The Arbitrator recommends the expungement of all references to the Underlying Claims, being occurrence numbers [REDACTED], [REDACTED], [REDACTED], and [REDACTED] from registration records maintained by the CRD, for Claimant [REDACTED] (CRD# [REDACTED]), with the understanding that, pursuant to Notice to Members 04-16,

Claimant [REDACTED] 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 specific Rule 2080 affirmative findings of fact for each of the occurrence numbers.

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

Occurrence number [REDACTED] (in which "Ms. K" is the customer in the underlying claim): In the case of Ms. K, Claimant was not directly or indirectly involved in any wrongdoing. The claim of negligence is erroneous and unfounded. The principal reasons for Ms. K's losses were due to her own independent decisions and the dotcom market dramatic downturn that occurred in the year 2000. Claimant was named individually by Ms. K's attorney and had, by that time been dismissed by UBS and was therefore forced to retain his own attorney to defend against the allegations made in the complaint. Claimant, acting on the advice of his attorney, settled for \$12,000.00 to avoid the cost and time involved in a hearing. Ms. K did not oppose expungement and spoke cordially to Claimant during the hearing. Expungement is recommended in this occurrence due to the fact that this case hinged almost entirely upon the actions of another UBS broker, who outside the purview of her role as a financial advisor, and without the knowledge or consent of UBS, used her education as a CPA to file fraudulent tax returns on behalf of Ms. K, the discovery of which led UBS to settle.

For occurrence number [REDACTED], Claimant is eligible for relief under FINRA Rules 2080(b)(1)(A) and (C): the claim, allegation or information is factually impossible or clearly erroneous; and the claim, allegation or information is false.

Occurrence number [REDACTED] (in which "Ms. S" is the customer in the underlying claim): In the case of Ms. S, the underlying instrument was an ING variable annuity that featured a living benefit which was approved by UBS's compliance department thereby ensuring suitability. The box pertaining to the living benefit was inadvertently left unchecked. In 2002, two years after holding the contract, Ms. S realized that the living benefit had not been included and she alleged misrepresentation with regard to the living benefit of the annuity. UBS determined that the wire room operator had neglected to include the living benefit rider on Ms. S's contract and UBS compensated ING for back fees for the living benefit in the amount of \$4,150.00 and reinstated the rider onto Ms. S's variable annuity. Claimant, who was no longer at UBS, was not contacted regarding the complaint nor given an opportunity to defend himself against the allegation. Claimant did not contribute to the settlement and was not involved in the resolution of the dispute.

For occurrence number [REDACTED], Claimant is eligible for relief under FINRA Rule 2080(b)(1)(A),(B), and (C): the claim, allegation or information is factually impossible or clearly erroneous; the registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation or conversion of funds; and the claim, allegation or information is false.

Occurrence number [REDACTED] (in which "Mr. B" is the customer in the underlying claim): In the case of Mr. B, the underlying instrument was an ING variable annuity with a living benefit. Mr. B later alleged, through counsel, that the investment was unsuitable and requested that the transaction be reversed. Claimant, who was no longer at UBS, was not contacted by UBS to participate in any part of the complaint, was not allowed to defend his position, and did not contribute to the settlement. UBS had certified the suitability of the investment which was actually recommended by Claimant's associate. Mr. B lost no money on the annuity and had been sent a prospectus that he signed indicating that he understood all aspects of the investment.

For occurrence number [REDACTED], Claimant meets FINRA Rule 2080(b)(1)(B) standard for a recommendation of expungement: the registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation or conversion of funds.

Occurrence number [REDACTED] (in which "Mr. and Mrs. G" are the customers in the underlying claim): The fourth and last request by Claimant for expungement involves Mr. and Mrs. G. Mr. G was an accredited investor, as defined by Rule 501 of Regulation D under the Securities Act of 1933, as he had a net worth of approximately \$4,000,000.00 with annual income in excess of \$125,000.00. He was a sophisticated investor who, in his interactions with Claimant, demonstrated the depth of his knowledge of the markets and the economy in general. On Mr. G's Managed Account Agreement, his objective was "growth-moderate/aggressive." Mr. G had prior experience with Real Estate Investment Trusts ("REIT"), REIT constituting the underlying investment in this complaint. In 2008 Mr. and Mrs. G met with Claimant and informed him that, after having first declined an investment in REIT, as a result of a forum they had attended they were now interested in pursuing a KBS REIT offering. At the forum, all aspects of the KBS REIT- illiquidity, risk, the real estate market, etc. were presented. Mr. and Mrs. G read and signed the subscription agreement and the H. Beck, Inc. (where Claimant was now a broker) disclosure documents. The purchase consisted of two \$100,000.00 transactions. The \$200,000.00 represented 5% of Mr. and Mrs. G's net worth.

In 2013, Mr. and Mrs. G alleged that Claimant had made misrepresentations and omissions with respect to an unsuitable, aggressive investment strategy for having recommended that Mr. and Mrs. G invest in a non-traded REIT. In 2014, Mr. and Mrs. G's complaint was arbitrated and settled.

Pursuant to FINRA Rule 2111, Claimant had a reasonable basis to believe that the recommendation was suitable for Mr. and Mrs. G.

Claimant was not named as a Respondent in the arbitration filed by Mr. and Mrs. G. Since Mr. and Mrs. G were provided with the KBS REIT prospectus and materials and were fully informed at a seminar about all aspects of the REIT and signed disclosures to that effect, and since Mr. and Mrs. G had personally opted for the dividend reinvestment, their claim that they "believed (the KBS REIT) would provide regular and dependable distributions," and that the investment would provide "liquidity within two years," is erroneous and without merit.

For occurrence number [REDACTED], the above meets the standard of FINRA Rules 2080(b)(1)(A) and (C). Also, since Claimant was not found to have committed any of the alleged violations and made no contribution towards the settlement he further qualifies for relief under Rule 2080 (b)(1)(B): the claim, allegation or information is factually impossible or clearly erroneous; the registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation or conversion of funds; and the claim, allegation or information is false.

For all Underlying Claims: In conclusion, expungement is recommended for the Underlying Claims as the necessary standards of FINRA Rule 2080, all or in part, for each of the occurrences was met, and the information on Claimant's CRD record serves no meaningful investor protection or regulatory value.

2. All other relief requests are denied.

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

The Arbitrator finds the customers that filed the Underlying Claims were each provided a copy of the Statement of Claim and informed of their right to participate fully in the expungement hearing by appearance, testimony, and the right for them, or their counsel, to cross examine Claimant's witnesses.

The Arbitrator conducted a recorded telephonic hearing on May 11, 2017 so the parties could present oral argument and evidence on Claimant's requests for expungement. All parties' representatives attended the hearing, along with Claimant, and Ms. K, the customer who filed occurrence number [REDACTED]. Neither of the Respondents, nor Ms. K, opposed Claimant's requests for expungement.

During the expungement hearing, Claimant withdrew the request for \$1.00 in damages.

The Arbitrator noted that Claimant did not previously file claims requesting expungement of the same disclosures.

The Arbitrator reviewed the settlement documents of the Underlying Claims and considered the amount of payments made to any party and any other terms and conditions of settlement. The Arbitrator determined that Claimant did not contribute to the settlements, except for the settlement of occurrence number [REDACTED], and Claimant's explanation of that one instance was considered to be plausible and reasonable and did not diminish the ultimate recommendation for expungement. The

Arbitrator also determined the settlement agreements were not conditioned upon any customer's agreement not to oppose expungement.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the statements and/or testimony by Claimant, Claimant's representative, Respondents' representatives, and Ms. K provided during the expungement hearing; all submitted documents, particularly the Statement of Claim and the settlement agreements related to the Underlying Claims; and Also, the total absence of opposition to expungement was weighed in the decision. The Arbitrator also reviewed Claimant's BrokerCheck<sup>®</sup> Report.

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OTHER FEES: H. Beck, Inc. and UBS have each paid to FINRA Office of Dispute Resolution the \$150.00 Member Surcharge previously invoiced.

FINRA Office of Dispute Resolution assessed a filing fee\* for each claim:  
Initial Claim Filing Fee = \$50.00

*\*The filing fee is made up of a non-refundable and a refundable portion.*

Discovery-Related Motion Fee

Fees apply for each decision rendered on a discovery-related motion.

One (1) decision on a discovery-related motion on the papers  
with one (1) arbitrator @ \$200.00/decision = \$200.00  
Claimant submitted one discovery-related motion

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Total Discovery-Related Motion Fees = \$200.00

The Arbitrator has assessed \$200.00 of the discovery-related motion fees to Claimant.

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, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) pre-hearing sessions with the Arbitrator @ \$50.00/session = \$100.00  
Pre-hearing conferences: February 22, 2017 1 session  
May 4, 2017 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$50.00  
Hearing Date: May 11, 2017 1 session

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Total Hearing Session Fees = \$150.00

The Arbitrator has assessed \$150.00 of the hearing session fees to Claimant.

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

**ARBITRATOR**

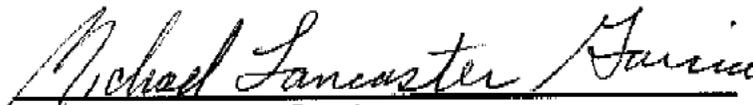
Michael Lancaster Garcia

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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



Michael Lancaster Garcia  
Sole Public Arbitrator



Signature Date

June 1, 2017  
Date of Service (For FINRA-ODR office use only)