

**Award**  
**FINRA Office of Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

UBS Financial Services Inc.

Hearing Site: Newark, New Jersey

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant ██████████: Dochter Kennedy and Owen Harnett, Esq.,  
AdvisorLaw LLC, Broomfield, Colorado.

For Respondent UBS Financial Services Inc.: Amy B. Bard, Esq., Bressler, Amery &  
Ross, P.C., Morristown, New Jersey.

**CASE INFORMATION**

Statement of Claim filed on or about: March 24, 2017.

████████████████████ signed the Submission Agreement: March 24, 2017.

Statement of Answer filed by Respondent on or about: May 17, 2017.

UBS Financial Services Inc. did not sign the Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: expungement.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

1. Expungement of occurrence # ██████████ from his CRD record pursuant to FINRA Rule 2080(b)(1)(A) as the claims, allegation, or information is factually impossible or clearly erroneous;
2. Expungement of occurrence # ██████████ from his CRD record pursuant to FINRA Rule 2080(B)(1)(C), as the claim, allegation, or information is false;

3. An award of compensatory damages in the amount of \$1.00 from the Respondent; and
4. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer Respondent did not object to Claimant's request for expungement.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The Arbitrator acknowledges that they have each read the pleadings and other materials filed by the parties.

Respondent did not file with FINRA Office of Dispute Resolution a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and, having answered the claim, is bound by the determination of the Arbitrator on all issues submitted.

Claimant submitted an Affidavit dated September 8, 2017, which indicates that by letter dated September 7, 2017, Claimant notified the customer, next of kin and estate of the customer, related to occurrence [REDACTED] of the expungement request and of the right to participate and testify at the expungement hearing and he provided the customer with a copy of the Statement of Claim. The Arbitrator noted that he reviewed the Affidavit and is satisfied that the notice requirement has been met.

The Arbitrator conducted a recorded telephonic expungement hearing on September 28, 2017 so the parties could present oral argument and evidence on Claimant's request for expungement of his CRD records.

The customer is deceased and no next of kin or estate participated in the expungement hearing or contested the request for expungement.

The Arbitrator reviewed the BrokerCheck® for Report [REDACTED] and the settlement documents, considered the amount of payments made to the customer in the underlying claim, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on the customer not opposing the request for expungement. The Arbitrator also noted that [REDACTED] did not contribute to the settlement amount.

The Arbitrator noted that [REDACTED] did not previously file a claim requesting expungement of the same disclosure in the CRD.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's Statement of Claim and exhibits; Claimant's BrokerCheck® Report, and Claimant's testimony and evidence presented at the telephonic expungement hearing.

### **AWARD**

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

1. Claimant's request for compensatory damages is denied.
2. The Arbitrator recommends the expungement of all references to occurrence [REDACTED] from registration records maintained by the Central Registration Depository ("CRD"), for [REDACTED] (CRD# [REDACTED]), with the understanding that, pursuant to Notice to Members 04-16, [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, the Arbitrator 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 Arbitrator has made the above Rule 2080 findings based on the following reasons:

Evidence was provided by the Claimant that the investments made over a long period of time produced a net profit, and that the advice provided by Claimant was consistent with the customer's written stated goals and preferences. There was no evidence introduced to refute such.

3. Any and all claims for relief not specifically addressed herein are denied.

### **FEES**

Pursuant to the Code of Arbitration Procedure, the following fees are assessed:

#### **Filing Fees**

FINRA Office of Dispute Resolution assessed a filing fee\* for each claim:

Initial Claim Filing Fee	= \$ 50.00
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\*The filing fee is made up of a non-refundable and a refundable portion.

**Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, UBS Financial Services, Inc. is assessed the following:

Member Surcharge = \$ 150.00

**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:

One (1) pre-hearing session with a single arbitrator @ \$50.00/session = \$ 50.00  
Pre-hearing conference: July 28, 2017 1 session

One (1) hearing session @ \$50.00/session = \$ 50.00  
Hearing Date: September 28, 2017 1 session

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Total Hearing Session Fees = \$ 100.00

The Arbitrator has assessed the \$100.00 hearing session fees to Claimant.

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

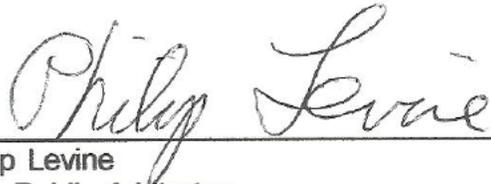
**ARBITRATOR**

Philip Levine

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**



Philip Levine  
Sole Public Arbitrator



Signature Date

**October 13, 2017**

Date of Service (For FINRA Office of Dispute Resolution office use only)