

AWARD

FINRA Office of DISPUTE RESOLUTION

CASE #:

█ ("Claimant") vs. UBS Financial Services Inc. ("Respondent" or "UBS")

REPRESENTATION OF PARTIES:

For Claimant █: Dochter Kennedy MBA, J.D. and Armin Sarabi, J.D., AdvisorLaw LLC, Broomfield, Colorado.

For Respondent UBS Financial Services Inc.: Ian Ross, Esq., Keesal, Young & Logan, San Francisco, California.

NATURE OF DISPUTE: Associated Person vs. Member

Statement of Claim filed on: February 24, 2017.

Statement of Answer filed on: May 12, 2017.

CASE SUMMARY: Claimant requested expungement of customer dispute occurrence number █ (the "Underlying Complaint").

In the Statement of Answer, Respondent stated that it will not oppose Claimant's request for expungement of the Underlying Complaint from his Central Registration Depository ("CRD") record. Respondent also stated that although the Statement of Claim does not appear to accuse Respondent of any wrongdoing, to the extent it does make any such allegations, Respondent denies those allegations.

RELIEF REQUESTED: In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Complaint from his CRD record pursuant to FINRA Rule 2080(b)(1)(A), as the claim, allegation, or information is factually impossible and clearly erroneous;
2. Expungement of the Underlying Complaint from his CRD record pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false;
3. 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 stated that Claimant is not entitled to damages and did not set forth a relief request.

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

On July 31, 2017, Claimant provided a copy of the notice sent to the customer in the Underlying Complaint by Certified Mail. The notice included a copy of the Statement of Claim and a letter advising the customer that although he is not required, nor under a duty to do so, he may participate in this hearing or submit written documentation.

On August 31, 2017, Claimant filed a copy of further correspondence sent to the customer in the Underlying Complaint by Certified Mail. The correspondence served as formal follow up to the July 31, 2017 letter sent to the customer, and provided notice of the November 1, 2017 expungement hearing. Claimant also advised the customer that he has the right to participate in this hearing, or submit written documentation, if he wished to do so.

Prior to the expungement hearing, Claimant filed a sworn Affidavit of Service dated September 5, 2017. In the Affidavit, the affiant stated that he served copies of the notice of expungement hearing on the customer by Certified Mail. Claimant also submitted additional expungement hearing exhibits.

The Arbitrator conducted a recorded telephonic hearing on November 1, 2017 so the parties could present oral argument and evidence on Claimant's request for expungement. Respondent appeared at the expungement hearing and did not contest the expungement request. The customer did not participate in the expungement hearing. The Arbitrator noted that the customer was served notice of the expungement hearing and did not respond.

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

The Arbitrator reviewed the BrokerCheck® Report for Claimant. The Arbitrator noted that the Underlying Complaint did not settle so there were no settlement documents to review.

The Arbitrator noted that Claimant 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:

- 1) Statement of Claim, including the following Exhibits 1-8: BrokerCheck® Report; Investor Publications: "An Introduction to 529 Plans"; US News and World Report: "The Ultimate Guide to Understanding 529 College Savings Plans"; FINRA Regulatory Notice 15-50 BrokerCheck December 2015; "AllianceBernstein L.P. Announces Extension of 529 College Savings Plan Relationship with Rhode Island" dated 6/02/2010; AllianceBernstein's "CollegeBoundfund 2003 Annual Report"; signed Resource Management Account Application for the customer, November 12, 1997; and a signed letter from the customer Authorizing Trade dated December 2001);
- 2) Respondent's Answer to the Statement of Claim; and
- 3) Claimant's evidence of service on the customer.

AWARD: After considering the pleadings, and the testimony and evidence presented at the expungement hearing, 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 occurrence number [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 the Code of Arbitration Procedure ("Code") Rule 13805, the Arbitrator has made the following Rule 2080 affirmative finding of fact: the claim, allegation, or information is false.

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

Claimant represents that in 1995, at the beginning of his career, Mr. S, an old family friend, became one of his first and biggest clients. Mr. S was a wealthy businessman and very sophisticated investor.

In 1999, Mr. S, with the advice of Claimant, funded college expense plans, also known as "529 plans," for his grandchildren with his children as the actual owners of the account.

In 2002, Mr. S sent a complaint to UBS, Claimant's employer, alleging that Claimant had misrepresented the 529 plans to him, that the funds were wrongfully invested and that he, Mr. S, had not properly authorized the transaction. In particular, he claimed that Claimant had misrepresented the tax implications of the funds and had represented that the principal was guaranteed from loss.

UBS investigated the complaint and found that it was without merit. Mr. S did not pursue the claim further.

In his Statement of Claim and testimony, Claimant represents and explains that Mr. S's claim was entirely false and without merit.

First, Claimant states that a short while prior to Mr. S making his claim, an administrative error was made in Mr. S's account. In order to make up for it, UBS paid Mr. S \$5,000.00. Claimant believes that Mr. S thought that by making another complaint, he would again be given a quick settlement to make up for it. He also believes that Mr. S did not understand the seriousness of the accusation or how it might affect Claimant's record, career and reputation.

Second, Claimant states that, due to the general economic decline in 2001 and 2002, the 529 plans had declined in value and that Mr. S's son-in-law had been "needling" him about this and that also prompted Mr. S to file the complaint.

Returning to the more general, Claimant also represents that in his 21 years in the industry, and having served between 800 and 1,000 clients, this is the only complaint that has ever been made against him.

The Arbitrator finds that Claimant's explanation of the situation is reasonable, coherent and credible. In particular, Claimant's explanation of Mr. S's motivation to make a false complaint is both compelling and credible. Claimant also testified that he researched the available 529 plans extensively at the time, explained their tax consequences in detail to Mr. S and never told Mr. S that they were guaranteed against loss of principal.

The Arbitrator also finds Claimant's testimony to be reasonable, credible and fully supported by all of the written evidence.

In addition, the Arbitrator notes that Mr. S did not pursue his claim after UBS denied it and elected not to respond to the notice of the expungement hearing. This strengthens Claimant's contention regarding Mr. S's motivation.

Therefore, Arbitrator recommends that this complaint be expunged from Claimant's CRD record on the grounds that the complaint is false.

2. All other relief requests are denied.

Pursuant to the Code, 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

**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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Respondent is assessed a Member Surcharge of \$150.00.

Postponement Fees

Postponements granted during these proceedings for which fees were assessed:

September 18, 2017, postponement by the parties = \$50.00

Total Postponement Fees = \$50.00

The Arbitrator has assessed \$50.00 of the postponement fees to Claimant.

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 (1) discovery-related motion

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:

One (1) pre-hearing session with a single arbitrator @ \$50.00/session = \$50.00
Pre-hearing conference: July 10, 2017 1 session

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

Total Hearing Session Fees = \$100.00

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

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

ARBITRATOR

Philip Aaron Tymon

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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


Philip Aaron Tymon
Sole Public Arbitrator

11/14/17
Signature Date

November 17, 2017
Date of Service (For FINRA-ODR office use only)