

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant
[REDACTED]

Case Number: [REDACTED]

vs.

Respondent
UBS Financial Services Inc.

Hearing Site: Salt Lake City, Utah

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant [REDACTED] ("Claimant"): Dochter Kennedy, MBA, J.D. and Michael O'Gara, J.D., AdvisorLaw LLC, Broomfield, Colorado.

For Respondent UBS Financial Services Inc. ("Respondent"): Sarah K. Yates, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: July 10, 2017.
Claimant signed the Submission Agreement: July 10, 2017.

Statement of Answer filed by Respondent on or about: September 15, 2017.
Respondent signed the Submission Agreement: July 17, 2017.

CASE SUMMARY

Claimant asserted a claim seeking expungement of three customer dispute occurrences ("Underlying Claims") from his Central Registration Depository ("CRD") records: two customer complaints, occurrence numbers [REDACTED] and [REDACTED] ("Underlying Complaints"); and one FINRA arbitration, occurrence number [REDACTED] ("Underlying Arbitration").

In the Statement of Answer, Respondent advised that it does not oppose the request for expungement made by Claimant. However, Respondent objected to Claimant's request of \$1.00 in compensatory damages and asserted various affirmative defenses regarding the damages request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Claims from his CRD record pursuant to FINRA Rule 2080(b)(1)(A), as the claims, allegations, or information are factually impossible or clearly erroneous;
2. Expungement of the Underlying Claims from his CRD record pursuant to FINRA Rule 2080(b)(1)(C), as the claims, allegations, or information are false;
3. Damages in the amount of \$1.00 from Respondents; and
4. Any and all other relief that the Arbitrator deems just and equitable.

OTHER ISSUES CONSIDERED AND DECIDED

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

On August 25, 2017, Claimant provided notice that the Statement of Claim had been served on: the customer in occurrence number [REDACTED] ("Mr. CB"); the customers in occurrence number [REDACTED] ("Mr. and Mrs. F"); and Claimant's customers in the Underlying Arbitration ("Underlying Arbitration Customers").

Mr. CB, Mr. and Mrs. F and the Underlying Arbitration Customers are hereinafter collectively referred to as the "Customers."

On September 1, 2017, Claimant filed an Affidavit of Service signed by Claimant's counsel advising that the Customers were served with the Statement of Claim on August 25, 2017.

On September 18, 2017, Claimant submitted a letter from Mr. CB to Claimant's counsel dated September 4, 2017 in response to Claimant's expungement request. The Arbitrator determined that Mr. CB's letter was an opposition to Claimant's expungement request.

On April 16, 2018, 2017, Claimant provided notice that the Underling Customers were served with notice of the expungement hearing.

On April 20, 2018, Claimant submitted a letter from Mr. and Mrs. F to Claimant's counsel dated August 28, 2017 opposing Claimant's expungement request.

On April 26, 2018, Claimant filed an Affidavit of Service signed by Claimant's counsel advising that the Underlying Customers were served with notice of the expungement hearing.

The Arbitrator conducted a recorded telephonic hearing on May 10, 2018 so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing and did not contest the request for expungement. The Underlying Customers did not appear at the expungement hearing. The Arbitrator determined that the Underlying Customers had notice of the hearing.

At the evidentiary hearing, Claimant withdrew his request for \$1.00 in compensatory damages.

The Arbitrator reviewed the BrokerCheck® Report for Claimant.

The Arbitrator also reviewed the settlement documents for the Underlying Arbitration, considered the amount of payments made to any party, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on Underlying Arbitration Customers not opposing the request for expungement. The Arbitrator also noted that Claimant did not contribute to the settlement amount.

The Arbitrator found that the Underlying Complaints did not result in settlement and therefore 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: BrokerCheck® Report and CRD Individual Snapshot Report dated July 10, 2017; Respondent's Answer and Pre-Hearing Brief in the Underlying Arbitration dated October 6, 2010; "Dotcom Bubble" Investopedia article, not dated; Uniform Submission Agreement in the Underlying Arbitration dated May 21, 2009; Personalized Retirement Plan for Mr. M, dated September 23, 1992; John Hancock Contract Summary for Mr. M, dated July 24, 2000; Flexible Purchase Payment Deferred Combination Fixed and Variable Annuity Application, signed by Mr. M on July 18, 1994; Executive Summary of Accounts for the Arbitration Customers dated February 15, 2010; Mr. L's Account Reconciliation, dated March 28, 2002; Confidential Settlement Agreement and General Release signed by the Underlying Arbitration Customers dated March 17, 2011; Mr. CB's Account Document dated June 23, 1998; Respondent's Response Letter to Mr. CB dated August 27, 2002; Respondent's Response Letter to Mr. F dated March 23, 2005; and Claimant's testimony.

The parties present at the hearing have agreed that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Arbitrator has decided 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, occurrence numbers [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 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:

Occurrence Number [REDACTED] (in which Mr. CB was the customer)

While Claimant handled Mr. CB's account, he did not complain about investments and the account was diversified between government, GinnieMae, high grade corporate bonds preferred, blue chip and a few growth stocks as Mr. CB had needs for cash flow and keeping abreast of inflation as a retiree. Claimant and Mr. CB talked frequently and, apparently, Mr. CB understood the strategies. Given his life expectancy, CD's would not be appropriate. During the market downturn occurring from 2000-2003, the total losses amounted to less than 5%, approximately twenty-five thousand dollars, occurring mostly in two funds that represented less than 10% of the portfolio. Although Mr. CB complained that he was placed in unsuitable investments after the market turned, as he was a conservative investor, the exhibits showed he informed Claimant he was a moderate risk investor. Under the circumstances, the Arbitrator finds the investments were appropriate for Mr. CB and expungement is recommended under FINRA Rules 2080(b)(1)(A) and 2080(b)(1)(C).

Occurrence Number [REDACTED] (in which Mr. and Mrs. F were the customers)

Mr. and Mrs. F complained that an unauthorized trade of Cisco Systems stock occurred in their non-retirement account, alleging \$10,254.49 should be reimbursed. No arbitration or court case was filed after Respondent denied the claim. Claimant discussed every trade with Mr. and Mrs. F, including this one. They held Cisco but sold it without consulting Claimant, who called and encouraged them to keep the position, as Cisco Systems was a good company. Mr. and Mrs. F's account was a flat rate account, meaning they paid a service charge but no commissions were due when investments were bought or sold. Claimant would have no economic incentive to perform an unauthorized trade as he would make no commissions. Mr. and Mrs. F's account was not a high turnover account; few trades were made and they sent Claimant an e-mail expressing excitement over how well the account performed. Mr. and Mrs. F did not complain about the trade until about three or four years later, after the market turned. When Mr. and Mrs. F complained to Respondent, Respondent offered to back out of the trade but Mr. and Mrs. F never sold it. The Arbitrator concludes that unauthorized trading did not take place. Expungement is recommended under FINRA Rules 2080(b)(1)(A) and 2080(b)(1)(C).

Occurrence Number [REDACTED] (in which Mr. M; Mr. L; and Ms. G. are the relevant Underlying Arbitration Customers)

A group of several of Respondent's customers complained about their losses after the market downturn named under this occurrence number. The Arbitrator found that it is appropriate to address only those customers whose accounts were handled by Claimant—Mr. M; Mr. L; and Ms. G.

The Arbitrator found that the other customers' accounts were handled by other financial advisors in Respondent's office, not by Claimant. Claimant had no knowledge of how they were handled and he was not part of any settlement discussions nor did he contribute anything to any settlements. Regarding those remaining customers, expungement is recommended under FINRA Rules 2080(b)(1)(A) and 2080(b)(1)(C).

Mr. M

Mr. M retired early and needed growth and income in order to not outlive his assets. Annuities would give him an income stream but no hedge against inflation. After discussion, it was determined he would need a balance of growth and income investments. At first Mr. M wanted to be annuity heavy but later decided he wanted more flexibility. A mix of funds with different allocations were agreed to with 53% securities and 47% fixed income. His account never went down even during the market downturn in the early 2000's and when he closed his account he realized a \$137,704.00 profit. Claimant and Mr. M met regularly, the investments were appropriate and met Mr. M's objectives. All documents regarding investments were given to Mr. M. The allegations in this occurrence number do not relate to this actual account upon examination of the exhibits provided.

Mr. L

Another early retiree, Mr. L wanted income and to outpace inflation. Claimant and Mr. L met regularly and Mr. L's funds were placed in a non-discretionary account. The account was diversified, holding securities, bonds, CD's, mutual funds, as shown in Claimant's Exhibit 9-Account Reconciliation for Mr. L from 6/2/99 to 3/28/02. During the bear market, the market lost 9.1% in 2000, 11.5% in 2001, and 22% in 2002 for a 40% cumulative loss. Mr. L closed his account at the height of the bear market; at the time the account was closed, it had lost 3.9%. Mr. L never complained when he was with Respondent, and only filed a claim in 2009. There was no misrepresentation and the investments were suitable, in fact after he moved the accounts, Mr. L maintained the majority of the investments he had when he was with Respondent. Claimant performed due diligence before recommending any investment. Unsuitability was not raised until several years after the market downturn.

Ms. G

Ms. G was Claimant's assistant during his employment with Respondent and married to another financial advisor with Respondent. Ms. G had two accounts, a

retirement account with over 80% of its holdings in Respondent's stock. Claimant would not be allowed to advise or comment about the wisdom of buying or selling Respondent's stock. Ms. G's accounts were not advisory; she neither asked Claimant for advice nor could Claimant provide it. Ms. G never asked for advice from Claimant. He had no advisory responsibility. It was an active account but strictly a brokerage account with no management fees. It does not seem possible for Claimant to have any culpability for any losses in this account.

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

FEES

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
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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(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 the following:

Member Surcharge	= \$ 150.00
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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(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) pre-hearing sessions with a single arbitrator @ \$50.00/session	= \$100.00
Pre-hearing conferences: October 30, 2017	1 session
April 2, 2018	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$50.00
Hearing Date: May 10, 2018	1 session

Total Hearing Session Fees	= \$150.00
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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

Daniel M. Yamshon

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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



May 29, 2018

Daniel M. Yamshon
Sole Public Arbitrator

Signature Date

May 30, 2018

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