

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

Case Number

vs.

Respondents

Hearing Site: Hartford, Connecticut

UBS Financial Services Inc.
Merrill Lynch, Pierce, Fenner & Smith Inc.

Nature of the Dispute: Associated Person vs. Members

REPRESENTATION OF PARTIES

For Claimant: Harris Freedman, Esq., HLBS Law, Westminster, Colorado.

For Respondent UBS Financial Services Inc. ("UBS"): Michael R. Gaico, Esq., Bressler, Amery & Ross, P.C., New York, New York.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Inc. ("Merrill Lynch"): Sarah K. Yates, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: December 4, 2017.

signed the Submission Agreement: December 4, 2017.

Statement of Answer filed by Respondent UBS on or about: January 23, 2018.

UBS Financial Services Inc. signed the Submission Agreement: December 7, 2017.

Statement of Answer filed by Respondent Merrill Lynch on or about: January 25, 2018.

Merrill Lynch Pierce Fenner & Smith Inc. signed the Submission Agreement: January 25, 2018.

CASE SUMMARY

Claimant asserted the following cause of action: expungement.

Respondent UBS asserted that it was required to report all sales practice claims by filing a Form U4 amendment to reflect the complaint.

Respondent Merrill Lynch asserted that it was required to report the complaint to the CRD pursuant to FINRA reporting rules.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of occurrence numbers [REDACTED] and [REDACTED] compensatory damages in the amount of \$1.00; and all other relief the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent UBS requested Claimant's request for compensatory damages be denied and forum fees be assessed against Claimant. Respondent UBS did not oppose Claimant's request for expungement.

In the Statement of Answer, Respondent Merrill Lynch requested Claimant's request for compensatory damages be denied and forum fees be assessed against Claimant. Respondent UBS did not oppose Claimant's request for expungement.

OTHER ISSUES CONSIDERED AND DECIDED

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

By correspondence dated May 23, 2018, Claimant provided the FINRA Office of Dispute Resolution with proof that he served the customers in the underlying complaints with notice of his expungement request and notice of the customers' right to participate and testify at the expungement hearing. The customers did not participate in the expungement hearing and did not contest the request for expungement.

The Arbitrator conducted a recorded telephonic hearing on June 11, 2018 so the parties could present oral argument and evidence on Claimant's request for expungement.

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

The Arbitrator reviewed the BrokerCheck® Report for Claimant [REDACTED] and the settlement agreements, considered the amount of payments made to the customers, and considered other relevant terms and conditions of the settlements. The Arbitrator noted that the settlements were not conditioned on the customers not opposing the requests for expungement. The Arbitrator also noted that Claimant [REDACTED] did not contribute to the settlement amounts.

The Arbitrator noted that Claimant [REDACTED] did not previously file a claim requesting expungement of occurrence numbers [REDACTED] and [REDACTED].

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the pleadings, Claimant's submissions, including correspondence and account records, Claimant's testimony, and the Claimant's BrokerCheck® Report.

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 reference to occurrence numbers [REDACTED] and [REDACTED] from [REDACTED] (CRD # [REDACTED]) registration Records maintained by the Central Registration Depository ("CRD"), 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 made the above Rule 2080 findings based on the following reasons:

In this proceeding, Associated Person [REDACTED] (" [REDACTED] ") requested expungement of two customer disputes from his CRD records. Claimant testified under oath and through counsel introduced documents which were received into evidence, including his CRD record, settlement agreements, account documentation and correspondence. Both customers were apprised of the hearing date and time but did not attend or offer up any objections to expungement. Nominal Respondents UBS and Merrill Lynch through counsel did not object to the expungement request. FINRA adopted Rule 13805 to establish procedures that arbitrators must follow before recommending expungement of customer dispute information related to arbitration cases from a broker's record. The grounds for expungement are specified in Rule 2080(b)(1)(A-C). They are: (A) that the claim, allegation or information is factually impossible or clearly erroneous; (B) the registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation or conversion of funds; or (C) that the claim, allegation or information is false. Additionally, Rule 2080(b)(2)(B) provides an alternate ground for expungement if it "would have no material adverse effect on investor protection, the integrity of the CRD system, or regulatory requirements."

Occurrence # [REDACTED]

In the first incident for which expungement is claimed, the customer alleged that Claimant sold all of a 400 share position in Exxon Mobil (XOM) instead of half of it as she had requested. The customer became a client of Claimant in 2006 at UBS by random assignment. He testified that he spoke to her on two occasions about her account holdings, which solely consisted of XOM. In their first conversation, she expressed a desire to sell half of the stock, but in a subsequent conversation, she agreed that it made sense to sell out the entire position and not continue to hold 200 shares. This was accomplished. Three years later, after her death, a trustee for her account alleged that her original instruction had not been honored and alleged damages in the sum of \$5,000.00. UBS settled the claim for \$2,426.24 to avoid the cost and expense of litigation, no part of which was paid by [REDACTED] nor was he a party to the ensuing settlement agreement which was not conditioned on an agreement not to oppose expungement.

Occurrence # [REDACTED]

In this matter which ripened into a FINRA arbitration, the customer asserted claims against Merrill Lynch (where [REDACTED] was registered) for unspecified damages arising from unsuitability, misrepresentation, unauthorized/excessive trading and failure to follow instructions. [REDACTED] was not named in that proceeding. It appears from the evidence that the customer became [REDACTED] client in 2005 when he was registered with UBS. A sophisticated investor, his primary investment objective at that time was growth and income, with a conservative risk tolerance and long term investment horizon. Specifically, the customer had a preference for CDs, which were entirely suitable for him. In 2007 [REDACTED] became registered at Merrill Lynch and retained the customer as a client. The client then began purchasing promotional Merrill CDs, eventually holding some 1.3 million in notional value spread over several accounts, and, as interest rates started to decline with the onset of the 2008 recession, developed a strategy of trading them to capitalize on price fluctuations. [REDACTED] testified that, throughout this time period, he had extensive contact with the customer and his accountant to discuss products and strategies and tax implications, including the impact of accrued interest payments. In 2009 [REDACTED] changed his registration to Woodbury Financial Services, and again the customer Wilburn transferred his accounts over to the new firm. Woodbury, however, was not comfortable with accommodating the customer's strategy of buying and selling CDs, and eventually the customer transferred his accounts away from [REDACTED]. At no time prior to the commencement of the above referenced arbitration some four years later did the customer complain about the trading strategy or the investments in his account, nor did he suggest that there had been any misrepresentations or unauthorized trading. His arbitration (which alleged unsubstantiated damages of \$200,000) was settled by Merrill Lynch to avoid the cost and expense of defense. [REDACTED] was not a party to the settlement and did not contribute to it. The Settlement Agreement was not conditioned on the customer's consent to expungement. [REDACTED] also testified as to the negative impact these disclosures have had on his marketing and business development efforts. No prior application for the relief sought herein has been made. By reason of the foregoing, the undersigned finds the customers' allegations to be clearly erroneous, false or both. There being no negative effect on the interests of consumer protection, the integrity of the CRD system or regulatory requirements, they should be expunged from this CRD.]

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:

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|--------------------------|-----------|
| 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 firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as parties, UBS Financial Services, Inc. and Merrill Lynch, Pierce, Fenner & Smith Inc. are each assessed the following:

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| Member Surcharge | =\$ 150.00 |
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Discovery-Related Motion Fee

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

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

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| Total Discovery-Related Motion Fees | =\$ 200.00 |
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The Arbitrator has assessed the \$200.00 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:

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| One (1) pre-hearing session with a single arbitrator @ \$50.00/session | =\$ 50.00 |
| Pre-hearing conference: April 5, 2018 | 1 session |

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| One (1) hearing session on expungement request @ \$50.00/session | =\$ 50.00 |
| Hearing Date: June 11, 2018 | 1 session |

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| Total Hearing Session Fees | =\$ 100.00 |
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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.

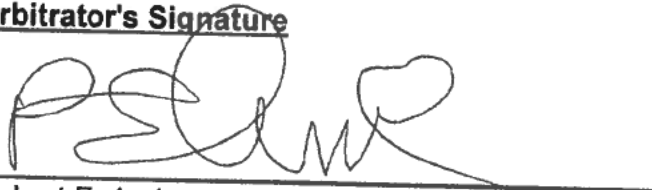
ARBITRATOR

Robert E. Anderson

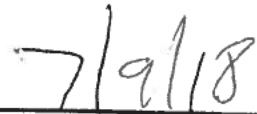
Sole Public Arbitrator

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



Robert E. Anderson
Sole Public Arbitrator



Signature Date

July 10, 2018

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