

**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: Cincinnati, Ohio

**Consolidated with:**

Claimant

████████████████████

Case Number: ██████████

vs.

Respondents

Barclays Capital Inc. and  
UBS Financial Services Inc.

Hearing Site: Cincinnati, Ohio

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Nature of the Dispute: Associated Person vs. Members

**REPRESENTATION OF PARTIES**

For Claimant ██████████ (“Claimant” or ██████████): Owen Harnett, J.D.,  
AdvisorLaw, LLC, Broomfield, Colorado.

For Respondent Barclays Capital Inc. (“Barclays”): John W. Mitchell, Esq., Barclays,  
New York, New York.

For Respondent UBS Financial Services Inc. (“UBS”): Patrick S. Christensen, Esq.,  
Bressler, Amery & Ross, P.C., New York, New York.

**CASE INFORMATION**

Case No. ██████████:

Statement of Claim filed on or about: November 6, 2017.  
Claimant signed the Submission Agreement: November 6, 2017.

Statement of Answer filed by UBS on or about: December 26, 2017.  
UBS signed the Submission Agreement: December 7, 2017.  
Amended Statement of Answer filed by UBS on or about: May 2, 2018.

Case No. [REDACTED]:

Statement of Claim filed on or about: November 29, 2017.  
Claimant signed the Submission Agreement: November 29, 2017.

### **CASE SUMMARY**

Case No. [REDACTED]:

In the Statement of Claim, Claimant asserted a claim seeking expungement of customer complaints, Occurrence Numbers [REDACTED] and [REDACTED], from his registration records maintained by the Central Registration Depository ("CRD").

In the Amended Statement of Answer, UBS did not oppose the request for expungement. UBS objected to Claimant's demand for monetary damages in the amount of one dollar (\$1.00).

Case No. [REDACTED]

In the Statement of Claim, Claimant asserted a claim seeking expungement of customer complaints, Occurrence Numbers [REDACTED], [REDACTED], and [REDACTED], from his registration records maintained by the CRD.

### **RELIEF REQUESTED**

Case No. [REDACTED]

In the Statement of Claim, Claimant requested expungement, compensatory damages in the amount of \$1.00, and any and all other relief that the Arbitrator deemed just and equitable.

In the Amended Statement of Answer, UBS requested Claimant's request for compensatory damages be denied, that all forum fees be assessed against Claimant, and that all other fees associated with this matter be assessed solely against Claimant.

Case No. [REDACTED]

In the Statement of Claim, Claimant requested expungement, compensatory damages in the amount of \$1.00, and any and all other relief that the Arbitrator deemed just and equitable.

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

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

Case No. [REDACTED]:

In the Initial Pre-Hearing Conference (“IPHC”) Scheduling Order dated March 21, 2018, the Arbitrator granted Claimant’s oral request to withdraw the \$1.00 in compensatory damages.

On or about April 6, 2018, Claimant filed a copy of the letters sent to the customers for Occurrence Numbers [REDACTED] and [REDACTED], providing them with the Statement of Claim, notice of the expungement hearing, including the date and time, and the option to participate in the expungement hearing. On or about April 11, 2018, Claimant filed an Affidavit of Service signed by Claimant’s counsel advising that the customers for Occurrence Numbers [REDACTED] and [REDACTED] had been served with the Statement of Claim.

Case No. [REDACTED]:

Barclays did not file with FINRA Office of Dispute Resolution a properly executed Submission Agreement or Statement of Answer, but is required to submit to arbitration pursuant to the Code of Arbitration Procedure (“Code”) and is bound by the determination of the Arbitrator on all issues submitted.

UBS did not file with FINRA Office of Dispute Resolution a properly executed Submission Agreement or Statement of Answer, but is required to submit to arbitration pursuant to the Code, and having appeared and participated at the IPHC, is bound by the determination of the Arbitrator on all issues submitted.

On or about January 29, 2018, Claimant filed a Notice of Voluntary Dismissal without Prejudice for his claims against Barclays.

In the IPHC Scheduling Order dated April 11, 2018, the Arbitrator ordered that the request to consolidate Case No. [REDACTED] and [REDACTED] be submitted no later than April 13, 2018, with citation and copy of applicable FINRA rule(s) and reasoning for allowing consolidation of the two cases.

Case No. [REDACTED]:

On or about April 11, 2018, Claimant filed a Motion to Consolidate. On or about April 11, 2018, UBS filed a Response in Support of Claimant’s Motion to Consolidate. In his Order dated April 14, 2018, the Arbitrator temporarily denied the Motion to Consolidate and requested additional information.

On or about April 17, 2018, Claimant filed a Renewed Motion to Consolidate. On or about April 17, 2018, UBS filed a Response to Claimant’s Renewed Motion to Consolidate. In his Order dated April 23, 2018, the Arbitrator granted Claimant’s Renewed Motion to Consolidate Case No. [REDACTED] and [REDACTED]. Thereafter, the two cases proceeded under FINRA Case No. [REDACTED].

On or about April 20, 2018, Claimant filed copies of the letters sent to the customers for Occurrence Numbers [REDACTED] and [REDACTED], providing them with the Statement of Claim,

notice of the expungement hearing, including the date and time, and the option to participate in the expungement hearing. Also on April 20, 2018, Claimant filed a Notice of Death Record and an Obituary for the customer for Occurrence Number [REDACTED]. On or about April 27, 2018, Claimant filed an Affidavit of Service signed by Claimant's counsel advising that the customers for Occurrence Numbers [REDACTED] and [REDACTED] had been served with the Statement of Claim and that Claimant was unable to serve the Statement of Claim on the customer for Occurrence Number [REDACTED], as she is deceased.

On or about May 2, 2018, Claimant filed copies of the letters sent to the customers for Occurrence Numbers [REDACTED] [REDACTED] with notice that, pursuant to the Arbitrator's Order, Case No. [REDACTED] had been consolidated with Case No. [REDACTED]. On or about May 8, 2018, Claimant filed a submission of proof of service to customers for Occurrence Numbers [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

On or about June 27, 2018, customer J.M. filed a written submission in opposition of the expungement request for Occurrence Number [REDACTED]

The Arbitrator conducted a recorded, telephonic hearing on June 28, 2018, for the presentation of testimony and evidence on [REDACTED] requests for expungement. UBS participated in the expungement hearing.

Customer J.M. participated in the expungement hearing and contested the request for expungement for Occurrence Number [REDACTED]. None of the other customers participated in the expungement hearing.

On the record at the expungement hearing, Claimant withdrew his request for \$1.00 in compensatory damages, which originated from Case No. [REDACTED].

On record at the hearing, Claimant withdrew his request for expungement of all references for Occurrence Number [REDACTED] from the registration records maintained by the CRD.

The Arbitrator reviewed the BrokerCheck® Report for [REDACTED] and the settlement documents for Occurrence Numbers [REDACTED] and [REDACTED], considered the amount of payments made to any party, and considered other relevant terms and conditions of the settlements.

For Occurrence Number [REDACTED], there was no settlement.

For Occurrence Number [REDACTED], there was no written settlement agreement. The transactions were reversed and the customer received no damages.

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

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence:

- Occurrence Number [REDACTED]: [REDACTED] testimony, [REDACTED] BrokerCheck® Report, Claimant's Exhibits 11 and 12 (customer's complaint and Firm's Letter responding to customer's complaint), and the Statement of Claim.
- Occurrence Number [REDACTED]: [REDACTED] testimony and [REDACTED] 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. [REDACTED] requests for expungement of Occurrence Numbers [REDACTED] [REDACTED] from his CRD records are denied.
2. The Arbitrator recommends the expungement of all references to Occurrence Number [REDACTED] from the 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, 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:

The customer's claim that [REDACTED] recommended an unsuitable investment in a commodity fund and that she was not advised of the risks involved is false. The customer had been investing in a commodity fund for six years before filing a complaint. In addition, the customer had opened a second commodity fund with a different brokerage firm about five years prior to filing the complaint. UBS reviewed the complaint and notified the customer of the denial of her claim. No further action was taken by the customer.

3. The Arbitrator recommends the expungement of all references to Occurrence Number [REDACTED] from the 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, 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:

The alleged unauthorized purchase is false because the customer called in the next morning after the trade, before ever receiving a trade confirmation and said that she needed to cancel the trade. The customer therefore knew that she had authorized the trade. The trade was cancelled that day as an accommodation and there were no damages.

4. 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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, UBS is assessed the following:

Member Surcharge	= \$ 150.00
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**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  

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Total Discovery-Related Motion Fee = \$ 200.00

The Arbitrator has assessed \$200.00 of the discovery-related motion fee 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(s), including a pre-hearing conference with the arbitrator(s), 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: March 21, 2018 1 session

Two (2) hearing sessions on expungement request @ \$50.00/session = \$ 100.00  
Hearing Date: June 28, 2018 2 sessions

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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**

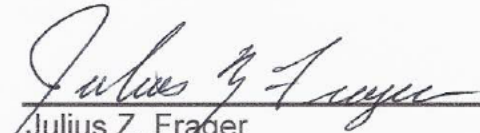
Julius Z. Frager

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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**

  
\_\_\_\_\_  
Julius Z. Frager  
Sole Public Arbitrator

July 31, 2018  
Signature Date

**July 31, 2018**

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