

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondents

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

Hearing Site: Chicago, Illinois

Nature of the Dispute: Associated Person vs. Members

REPRESENTATION OF PARTIES

For Claimant ██████████. ("Claimant" or ██████████): Dochter Kennedy, Esq. and Erica Harris, AdvisorLaw LLC, Broomfield, Colorado.

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

For Respondent UBS Financial Services Inc. ("UBS"): David Hantman, Esq., Bressler, Amery & Ross, PC, Florham Park, New Jersey.

CASE INFORMATION

Statement of Claim filed on or about: February 2, 2018.
Claimant signed the Submission Agreement: February 2, 2018.

Statement of Answer filed by Merrill Lynch on or about: April 4, 2018.
Merrill Lynch signed the Submission Agreement: April 10, 2018.

Statement of Answer filed by UBS on or about: March 28, 2018.
UBS signed the Submission Agreement: February 7, 2018.

CASE SUMMARY

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

In the Statement of Answer, Merrill Lynch took no position on the request for expungement of Occurrence Number ██████████ and objected to Claimant's demand for monetary damages in the amount of one dollar (\$1.00). Merrill Lynch asserted various affirmative defenses.

In the Statement of Answer, UBS did not oppose the request for expungement of Occurrence Number [REDACTED] and objected to Claimant's demand for monetary damages in the amount of one dollar (\$1.00). UBS advised it reported the customer complaint on [REDACTED] CRD records pursuant to FINRA rules, irrespective of whether UBS believed the claim had merit. UBS denied any allegations of wrongdoing.

RELIEF REQUESTED

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 deems just and equitable.

In the Statement of Answer, UBS requested that the Arbitrator assess all forum fees associated with this arbitration against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

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

On or about May 24, 2018, Claimant filed a copy of the letter sent to the customer for Occurrence Number [REDACTED], providing him with the Statement of Claim, notice of the expungement hearing, including the date and time, and the option to participate in the expungement hearing. Claimant filed a Notice of Death Record and an Obituary for the customer for Occurrence Number [REDACTED]. On or about June 4, 2018, Claimant filed an Affidavit of Service signed by Claimant's counsel advising that the customer for Occurrence Numbers [REDACTED] was 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 July 26, 2018, UBS filed a letter dated May 14, 2009, from [REDACTED] to the customer that precipitated the customer complaint. This letter is also referenced in the customer's verbal complaint dated June 8, 2009, which was produced by UBS to Claimant in discovery.

The Arbitrator conducted a recorded, telephonic hearing on July 31, 2018, for the presentation of testimony and evidence on [REDACTED] requests for expungement. Both Merrill Lynch and UBS participated in the expungement hearing and did not contest the request for expungement. The customer for Occurrence Number [REDACTED] did not participate in the expungement hearing, however, he filed an Affidavit dated July 18, 2018, supporting [REDACTED] request for expungement.

On the record at the expungement hearing, Claimant withdrew his request for \$1.00 in compensatory damages.

On the record at the expungement hearing, the Arbitrator requested an additional document from Claimant. On or about August 1, 2018, Claimant filed the Pilgrim Prospectus for the Arbitrator's consideration.

The Arbitrator reviewed the BrokerCheck® Report for [REDACTED] and the settlement documents, considered the amount of payments made to any party, 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.

For Occurrence Number [REDACTED] the Statement of Claim included an exhibit from Merrill Lynch dated March 20, 1996, outlining the settlement. No copy of the settlement agreement was provided. The Arbitrator ordered Claimant to contact the customer for more information. Claimant provided documentation that the customer is deceased. The Statement of Claim referenced that Merrill Lynch credited the customer's account in exchange for the release of the complaint and that Claimant contributed to the settlement amount. The Arbitrator heard testimony of payments, but did not consider it determinative of his decision to grant expungement.

For Occurrence Number [REDACTED], the Arbitrator noted that Claimant did not contribute to the settlement amount.

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:

- For Occurrence Number [REDACTED]: the testimony of Claimant, the letter dated March 20, 1996, discussing the deteriorating market conditions, and the Pilgrim Prospectus.
- For Occurrence Number [REDACTED]: the testimony of Claimant and his letter dated May 19, 2009, where he acknowledged that he made a mistake and reviewed the earlier rider.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submission, 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 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 Rule 13805 of the Code of Arbitration Procedure, the Arbitrator has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

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

The claim that [REDACTED] recommended an adjustable rate mortgage fund that was unsuitable is clearly erroneous. [REDACTED] made the recommendation to move funds from the client's bank account to Pilgrim Trust for a better rate of return. There was no surrender charges and the fund had low volatility. Due to the deteriorating market conditions and mismanagement of the fund, the fund lost value.

2. 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 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 allegation that [REDACTED] made a misrepresentation to the client regarding the guarantee of the annuity is false. [REDACTED] mistakenly reviewed the earlier rider, which guaranteed a longer period of time. This was not an intentional and knowing misstatement. Moreover, [REDACTED] sent a letter to his client on May 14, 2009 admitting his mistake.

3. 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

**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, Merrill Lynch and UBS are assessed the following:

Merrill Lynch:
Member Surcharge = \$ 150.00

UBS:
Member Surcharge = \$ 150.00

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 one (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(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: May 21, 2018 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing Date: July 31, 2018 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

Leon Fox

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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

s/Leon Fox/s

Leon Fox
Sole Public Arbitrator

August 10, 2018

Signature Date

August 10, 2018

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