

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimants

[REDACTED]

Case Number: [REDACTED]

vs.

Respondent

UBS Financial Services Inc.

Hearing Site: Los Angeles, California

Nature of the Dispute: Associated Persons vs. Member

REPRESENTATION OF PARTIES

For Claimants [REDACTED] ([REDACTED]) and [REDACTED] collectively "Claimants": Dochter Kennedy MBA, J.D. and Erica J. Harris, Esq., AdvisorLaw, LLC, Broomfield, Colorado.

For Respondent UBS Financial Services Inc. ("Respondent"): William McC. Montgomery, Esq., Keesal, Young & Logan, Long Beach, California.

CASE INFORMATION

Statement of Claim filed on or about: January 18, 2018.
Claimants signed Submission Agreements: January 18, 2018.

Statement of Answer filed by Respondent on or about: March 21, 2018.
Respondent signed the Submission Agreement: February 7, 2018.

CASE SUMMARY

Claimants asserted claims seeking expungement of customer dispute occurrence numbers [REDACTED] and [REDACTED] for [REDACTED] and customer dispute occurrence numbers [REDACTED] and [REDACTED] for [REDACTED] from their respective Central Registration Depository ("CRD") records (the "Underlying Claims"). Occurrence numbers [REDACTED] and [REDACTED] relate to FINRA arbitration case number [REDACTED]. Occurrence numbers [REDACTED] and [REDACTED] relate to FINRA arbitration case number [REDACTED].

In the Statement of Answer, Respondent did not oppose Claimants' expungement requests.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested:

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

In the Statement of Answer, Respondent did not set forth a relief request but stated that Claimants are not entitled to \$1.00 compensatory damages or any amount.

OTHER ISSUES CONSIDERED AND DECIDED

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

On May 21, 2018, the Arbitrator conducted the Initial Pre-Hearing Conference (“IPHC”) with the parties. During the IPHC, Claimants withdrew their claim for compensatory damages against Respondent. Respondent stated that it has no objection to and will not oppose Claimants’ expungement requests and that it will not appear at the expungement hearing.

On May 30, 2018, Claimants filed notice that the Statement of Claim and notice of the expungement hearing was served on the customers in the Underlying Claims (“Customers”)

On June 5, 2018, Claimants filed an Affidavit of Service of the Statement of Claim on the Customers.

The Arbitrator conducted a recorded telephonic hearing on July 12, 2018 so the parties could present oral argument and evidence on Claimants’ requests for expungement. As previously advised, Respondent did not participate in the expungement hearing and did not object to or oppose the expungement requests. None of the Customers appeared at the expungement hearing. The Arbitrator found that the Customers were served with the Statement of Claim and received notice of the expungement hearing.

At the outset of the expungement hearing, Claimants again withdrew their request for \$1.00 in damages against Respondent.

On July 31, 2018, the Arbitrator issued an Order to Claimants to produce, among other things, copies of the Statements of Claim from the Underlying Claims and any other complaints in connection with the requests for expungement. The Arbitrator also ordered Claimants to provide additional information as to any previous requests for expungement made by, or on behalf of either or both Claimants, and the resolution of each such prior request.

On August 7, 2018, Claimants filed additional information and documentation in response to the Arbitrator's Order. In their response, Claimants advised, among other things, that neither Claimant has ever requested expungement before nor had expungement requested on their behalf.

The Arbitrator noted that Claimants' August 7, 2018 filing states that neither Claimant has ever requested expungement before nor had expungement requested on their behalf. However, the Arbitrator noted that expungement was requested on Claimants' behalf in the Statement of Answer in FINRA arbitration case number [REDACTED] (related to occurrence numbers [REDACTED] and [REDACTED]). Based on the written representations made by Claimants in this case, the Arbitrator determined that the Panel in case number [REDACTED] did not substantively rule on Claimants' expungement request. The Statement of Answer in FINRA arbitration case number [REDACTED] (related to occurrence numbers [REDACTED] and [REDACTED]) was not produced in this case. However, based on Claimants' written representations in this case, the Arbitrator determined that Claimants did not previously request expungement in case number [REDACTED] and therefore the Panel did not substantively rule on any expungement request for Claimants in that case.

The Arbitrator noted that Claimants did not serve the M Trust, a named customer-claimant from FINRA arbitration case number [REDACTED] (occurrence numbers [REDACTED] and [REDACTED]), with the Statement of Claim and notice of the expungement hearing. In their August 7, 2018 filing, Claimants advised the Arbitrator that the M Trust was never a customer of either Claimant, that the M Trust complaint is not listed on either Claimant's BrokerCheck® Report or CRD record, and that the M Trust complaint is entirely irrelevant to this case. Based on Claimants' representations, the Arbitrator determined that notice on the M Trust was not necessary.

The Arbitrator reviewed the BrokerCheck® Report for Claimants.

The Arbitrator reviewed the settlement documents for the Underlying Claims, considered the amount of payments made to any party, and considered other relevant terms and conditions of the settlements. The Arbitrator noted that settlement of the Underlying Claims was not conditioned on the Customers not opposing the request for expungement. The Arbitrator also noted that Claimants did not contribute to the settlement amounts. The Arbitrator also noted that the settlement agreements were between the Customers and Respondent, that the settlement agreements did not involve Claimants, and that Claimants did not contribute to or participate in the settlement agreements.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the Statement of Claim, Statement of Answer and related exhibits; Claimants' respective BrokerCheck® Reports; the settlement agreements; and Claimants' sworn testimony, which confirmed the facts set forth in their Statement of Claim.

The Arbitrator has agreed that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, the testimony and evidence presented at the expungement hearing, and the post-hearing submissions, 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 numbers [REDACTED] and [REDACTED] from the registration records maintained by the CRD for [REDACTED] (CRD# [REDACTED]) and of all references to occurrence numbers [REDACTED] and [REDACTED] from the registration records maintained by the CRD for [REDACTED] (CRD# [REDACTED]), with the understanding that, pursuant to Notice to Members 04-16, Claimants [REDACTED] and [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 "Code"), the Arbitrator has made the following Rule 2080 affirmative findings of fact: The claim, allegation, or information is factually impossible or clearly erroneous; the registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and the claim, allegation, or information is false.

The Arbitrator has made the above Rule 2080 findings based on the following reasons: It is clear to the Arbitrator that the allegations in the Underlying Claims are factually impossible or clearly erroneous, that Claimants were not involved in a prohibited investment-related sales practice, and that the claims are false.

The Customers' losses alleged in occurrence numbers [REDACTED] and [REDACTED] were due to market conditions and not any action or inaction by Claimants. The disruption of the markets which gave rise to the allegations made in occurrence numbers [REDACTED] and [REDACTED] and felt throughout the financial community included the collapse of Bear Sterns and Lehman Brothers, the government takeover of Fannie Mae and Freddie Mac, the acquisition of Merrill Lynch by Bank of America, the government's bailout of AIG, the Wells Fargo acquisition of Wachovia and a significant loss of value in the securities markets.

The Customers in occurrence numbers [REDACTED] and [REDACTED] alleged, among other things, that Claimants were negligent, breached their fiduciary duty, misrepresented the Lehman securities and failed to diversify the Customers' portfolios because it contained the Lehman Notes presupposed that somehow Claimants knew or should have known about the impending financial disruption of the securities markets. This is simply not the case. The allegations in occurrence numbers [REDACTED] and [REDACTED] were based on the purchase of the Lehman Notes, which became part of the Lehman Brothers bankruptcy. The

Arbitrator also noted that the Customers from occurrence numbers [REDACTED] and [REDACTED] continue to do business with Claimants.

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
--------------------------	------------

**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
------------------	-------------

Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

June 25, 2018, postponement by Claimants	= \$50.00
--	-----------

Total Postponement Fees	= \$50.00
-------------------------	-----------

The Arbitrator has assessed \$50.00 of the postponement fees jointly and severally to Claimants.

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 12, 2018	1 session

Total Hearing Session Fees	= \$100.00
----------------------------	------------

The Arbitrator has assessed \$100.00 of the hearing session fees jointly and severally to Claimants.

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

ARBITRATOR

Robert D. Sussin

-

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 D. Sussin
Sole Public Arbitrator

09/12/2018
Signature Date

September 14, 2018

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