

**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: Los Angeles, California

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant ██████████ (“Claimant”): Dochter Kennedy, MBA, J.D., and Owen Harnett, Esq., AdvisorLaw, LLC, Broomfield, Colorado.

For Respondent UBS Financial Services Inc. (“Respondent”): Cheryl S. Chang, Esq., Keesal, Young & Logan, Long Beach, California.

**CASE INFORMATION**

Statement of Claim filed on or about: February 20, 2018.  
Claimant signed the Submission Agreement: February 20, 2018.

Statement of Answer filed by Respondent on or about: April 17, 2018.  
Respondent signed the Submission Agreement: March 1, 2018.

**CASE SUMMARY**

Claimant asserted a claim seeking expungement of a customer complaint, occurrence number ██████████ (“Underlying Complaint”) from his Central Registration Depository (“CRD”) record.

In the Statement of Answer, Respondent advised that while it does not oppose Claimant’s request for expungement, it objects to Claimant’s request for compensatory damages.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Complaint from his CRD record 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 Complaint from his CRD record 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 requested denial of Claimant's request for an award of damages.

At the hearing, Claimant withdrew his request for damages in the amount of \$1.00 from Respondent.

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

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

On August 1, 2018, Claimant submitted an Affidavit of Service signed by Claimant's counsel advising that upon review of the public information available on the Lexis Nexis database, Claimant was unable to serve the Statement of Claim on the customers in the Underlying Complaint ("Customers") as they are deceased.

The Arbitrator conducted a recorded telephonic hearing on October 1, 2018 so the parties could present oral argument and evidence on Claimant's request for expungement. Respondent did not participate in the expungement hearing and, as stated in the Statement of Answer, did not oppose the expungement request. No one for the Customers appeared at the hearing.

The Arbitrator reviewed Claimant's BrokerCheck® Report.

The Arbitrator noted that the Underlying Complaint was not settled and therefore there were no settlement documents to review and no money was paid by Claimant or Respondent in connection with the Underlying Complaint. Further, the Arbitrator noted that, other than the complaint letter from the Customers, no FINRA arbitration claim was filed.

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: the pleadings; Claimant's BrokerCheck® Report; and exhibits 02-08 - Exhibit 02 (Claimant's statement dated 05-25-01); Exhibit 03 (Letter from Mr. S, Counsel and Divisional Vice President with Respondent, to the Customers dated 07-03-01); Exhibit 04 (the Customers' authorization letter to Respondent dated 05-07-01); Exhibit 05 (the Customers' authorization letter to Claimant dated 07-05-00); Exhibit 06 (the Customers' authorization letter to Claimant dated 08-31-00); Exhibit 07 (Respondent's transaction confirmation sheet dated 12-14-00), and Exhibit 08 (the Customers' account information sheet dated 05-25-01).

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 Complaint, 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 ("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 claim, allegation, or information is false.

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

The Underlying Complaint in this matter consists of a complaint letter from the Customers alleging that a trade made six months earlier, and which had declined in value due to market forces, was unauthorized.

The evidence, including Claimant's sworn testimony and the supporting Exhibits 02-08 (identified above) independently confirm that the transaction in question was an informed decision by the Customers. The exhibits confirmed in writing and corroborated Claimant's sworn testimony.

It is clear that the Customers made an informed decision to execute the trade thus the allegation is factually impossible and erroneous (FINRA Rule 2080(b)(1)(A)) and is false (FINRA Rule 2080(b)(1)(C)).

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



**ARBITRATOR**


Robert D. Sussin

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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**



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Robert D. Sussin  
Sole Public Arbitrator

10/08/2018

\_\_\_\_\_  
Signature Date

October 09, 2018  
Date of Service (For FINRA Office of Dispute Resolution office use only)