

**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: San Francisco, California

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant ██████████ ("Claimant"): Eric Litow, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent UBS Financial Services Inc. ("Respondent"): Simon M. Levy, Esq., Keesal, Young & Logan, San Francisco, California.

**CASE INFORMATION**

Statement of Claim filed on or about: January 31, 2018.  
Claimant signed the Submission Agreement: January 31, 2018.

Statement of Non-Opposition to Claimant's Statement of Claim filed by Respondent on or about: March 28, 2018.  
Respondent did not sign the Submission Agreement.

**CASE SUMMARY**

Claimant asserted a claim seeking expungement of two customer complaints, occurrence numbers ██████████ and ██████████, ("Underlying Complaints") from his Central Registration Depository ("CRD") records.

In its Statement of Non-Opposition, Respondent advised that it does not oppose Claimant's expungement request but denied the allegations of wrongdoing made in the Statement of Claim.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Complaints 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 Complaints 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 and equitable.

In its Statement of Non-Opposition, Respondent did not set forth a specific relief request.

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

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

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

Respondent did not file with FINRA Office of Dispute Resolution a properly executed Submission Agreement 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.

On September 27, 2018, Claimant provided notice that the Statement of Claim and notice of the expungement hearing had been served on the customers in occurrence number [REDACTED] ("Mr. and Mrs. C") and the customer in occurrence number [REDACTED] ("Mr. F"). Hereinafter, Mr. and Mrs. C and Mr. F are collectively referred to as "Customers."

On October 15, 2018, Claimant submitted an Affidavit of Service signed by Claimant's counsel advising that the Customers had been served with the Statement of Claim.

The Arbitrator conducted a recorded telephonic hearing on October 30, 2018 so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing and, as stated in the Statement of Non-Opposition, did not oppose the request for expungement. The Arbitrator found that the Customers were all fully notified of this proceeding and received a copy of Claimant's Statement of Claim. The Customers did not respond in any manner and did not request to appear at this hearing.

The Arbitrator reviewed the BrokerCheck® Report for Claimant.

The Arbitrator found that Respondent settled globally with a class of investors in conjunction and in coordination with the SEC and Treasury Department, in which Respondent agreed to purchase, at full value, auction rate securities ("ARS") held by its clients. The Underlying Complaints both relate to ARS investments. Claimant was not involved in the global settlement. The Arbitrator reviewed the terms of the global

settlement as set forth in the “Auction Rate Securities Summary of Settlement Terms” dated August 8, 2008, published by Respondent. Accordingly, the Arbitrator considered the amount of payments made to any party, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on Customers not opposing the request for expungement. The Arbitrator also noted that Claimant did not contribute to the settlement amount.

The Arbitrator found that there were no other settlement documents for him to review with respect to the global settlement.

The Arbitrator noted that Claimant 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: Statement of Claim, and attached exhibits 1-6, specifically, exhibit 4 – Respondent’s letter to Mr. and Mrs. C dated April 11, 2008, exhibit 5 – Respondent’s Media Release, dated July 15, 2008, and exhibit 6 – Respondent’s Auction Rate Securities Summary of Settlement Terms; Respondent’s Statement of Non-Opposition; and Claimant’s additional exhibits 7-10, specifically, exhibit 8 – Claimant’s email correspondence with Mr. C.

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 occurrence numbers [REDACTED] and [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 false.

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

The two matters at issue involved very similar facts. In both cases the Customers, with Claimant's guidance, invested in ARS. The investments did well until the financial crisis of 2008. In February 2008, there was a failure of the underlying auctions of the ARS. This did not threaten the value of the ARS, but did render them illiquid for some period of time. Eventually, in about July 2008, UBS, in coordination with the SEC, the Treasury Department and other agencies, reached a global settlement with all holders of ARS in which UBS would, initially, make essentially interest free loans to any clients who were holders of ARS and needed immediate liquidity and, over time, would repurchase all ARS, thereby resolving the liquidity issue. Claimant was in no way involved with the settlement. In the settlement, neither UBS nor Claimant admitted to any wrongdoing.

In addition, it does not appear that any of the underlying customers alleged unsuitability or anything else, other than issues regarding the liquidity of the investment.

**Occurrence Number [REDACTED] (in which Mr. and Mrs. C were the customers)**

Mr. and Mrs. C had been clients of Claimant since 1995. In 2005, with Claimant's guidance, Mr. and Mrs. C invested a substantial portion of their portfolio in ARS. The investment performed well until February 2008 when the failure of the underlying auction rendered the ARS illiquid, at least temporarily. At that time, Mrs. C filed a complaint with UBS that she had been assured that the ARS investment was "100% liquid".

Claimant gave extensive, credible and detailed testimony that he had explained fully to Mr. and Mrs. C how the ARS worked and that they understood that the ARS could, in very rare circumstances, become illiquid, though that was extremely unlikely and had never actually happened.

In addition, Claimant stated that the person who initially recommended Mr. and Mrs. C to him is still a client of Claimant.

**Occurrence Number [REDACTED] (in which Mr. F was the customer)**

Mr. F had been a client of Claimant since 1996. In 2005 and 2006, with Claimant's guidance, Mr. F invested a substantial portion of his portfolio in ARS. The investment performed well until February 2008 when the failure of the underlying auction rendered the ARS illiquid, at least temporarily. Shortly after the auction failure, Mr. F sent a note to UBS stating that he was disappointed in the investment and felt that Claimant and Respondent had not been looking out for him. His note did not allege any specific violations on Claimant's part. Claimant felt that, due to its lack of specificity as to any actual misconduct by Claimant, it did not even rise to the level of a complaint that should be entered into the CRD, but his supervisor at UBS felt that it should be entered into the CRD.

Claimant gave extensive, credible and detailed testimony, which is backed up, at least in part, by the exhibits submitted, that the ARS were a suitable and prudent

investment for Mr. F and that he had explained fully to Mr. F how the ARS worked and that Mr. F understood how the ARS worked.

Based upon all of the above, the Arbitrator finds that there is strong and convincing evidence that Claimant did not misrepresent the investment to the Customers and that their complaints were without merit and untrue. Therefore, it is not to the public benefit that these complaints remain on Claimant's CRD and I recommend that they be removed.

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
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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(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
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#### **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 24, 2018	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$50.00
Hearing Date: October 30, 2018	1 session

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Total Hearing Session Fees	= \$100.00
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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**

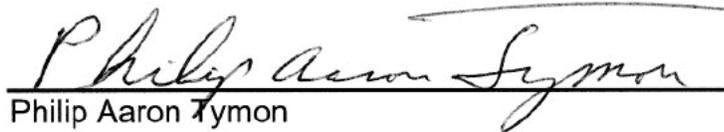
Philip Aaron Tymon

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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**

  
Philip Aaron Tymon  
Sole Public Arbitrator

  
Signature Date

December 4, 2018  
Date of Service (For FINRA Office of Dispute Resolution office use only)