

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

Case Number: [REDACTED]

vs.

Respondent

Hearing Site: Seattle, Washington

UBS Financial Services Inc.

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant [REDACTED] ("Claimant"): Dochter Kennedy, MBA, J.D. and Michael O'Gara, Esq., AdvisorLaw LLC, Westminster, Colorado.

For Respondent UBS Financial Services Inc. ("Respondent"): Igor V. Stadnik, Esq. and Neal S. Robb, Esq., Keesal, Young & Logan, Seattle, Washington.

CASE INFORMATION

Statement of Claim filed on or about: December 21, 2018.
Amended Statement of Claim filed on or about: February 12, 2019.
Claimant signed the Submission Agreement: December 20, 2018.

Answer to Amended Statement Claim filed by Respondent on or about: February 21, 2019.
Respondent signed the Submission Agreement: January 9, 2019.

CASE SUMMARY

Claimant asserted a claim seeking expungement of an NASD arbitration case, occurrence number [REDACTED] from his Central Registration Depository ("CRD") records.

In the Amended Statement of Claim, Claimant added a claim seeking expungement of a customer complaint/NASD arbitration case, occurrence number [REDACTED] from his CRD records, and included additional factual allegations. Hereinafter, occurrence numbers [REDACTED] and [REDACTED] are collectively referred to as the "Underlying Claims."

In the Answer to the Amended Statement of Claim, Respondent denied any allegations of wrongdoing and advised that it did not oppose Claimant's request for expungement.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of occurrence number [REDACTED] from his 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 occurrence number [REDACTED] from his 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 the Respondent; and
4. Any and all other relief that the Arbitrator deems just and equitable.

In the Amended Statement of Claim, Claimant requested:

1. Expungement of the Underlying Claims from his 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 his 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 the Respondent; and
4. Any and all other relief that the Arbitrator deems just and equitable.

In the Answer to the Amended Statement of Claim, Respondent did not set forth any relief request.

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

OTHER ISSUES CONSIDERED AND DECIDED

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

On June 10, 2019, Claimant provided notice that the Amended Statement of Claim and notice of the expungement hearing had been served on the customer in [REDACTED] number [REDACTED] ("Ms. M"), and the customer in occurrence number [REDACTED] ("Mr. E"). Hereinafter, Ms. M and Mr. E are collectively referred to as the "Customers."

On June 17, 2019, Claimant filed an Affidavit of Service, advising that the Customers had been served with a copy of the Statement of Claim.

The Arbitrator conducted a recorded telephonic hearing on August 14, 2019 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 Answer to the Amended Statement of Claim, did not oppose the request for expungement. The Customers also did not participate in the expungement hearing. The Arbitrator found that the Customers had notice of the hearing.

The Arbitrator reviewed Claimant's BrokerCheck® Report.

The Arbitrator noted that occurrence number [REDACTED] did not settle and therefore, there were no settlement documents to review.

The Arbitrator reviewed the settlement documents for occurrence number [REDACTED]. 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 Mr. E not opposing the request for expungement. The Arbitrator also noted that Claimant did not contribute to the settlement amount.

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: Claimant's testimony; Statement of Claim with exhibits; Amended Statement of Claim; Answer to Amended Statement of Claim; Claimant's pre-hearing brief; and all exhibits submitted.

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 the Underlying Claims, occurrence numbers [REDACTED] and [REDACTED] from registration records maintained by 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:

Occurrence Number [REDACTED] (in which Ms. M is the underlying customer)

Ms. M opened an account with Respondent in July 1998. At that time she elected, in her original account application, to have the option of trading on

“margin.” In the next few months Ms. M purchased positions in a number of different equities, primarily in the “tech” sector. Claimant became her financial advisor in December, 1998. According to the records submitted as exhibits by Claimant, Ms. M had already elected to trade on margin and had purchased her equities prior to Claimant becoming her financial advisor.

Claimant testified that when he became her financial advisor, he discussed with her the risks of trading on “margin.” Claimant testified that Ms. M fully understood what the risks were and that she affirmed her wish to trade on margin. Claimant also testified that he reviewed her equity positions with her and she affirmed that she wanted to maintain those positions. Claimant testified that the account was non-discretionary and that, therefore, he could not have traded in the account without Ms. M’s assent.

Claimant testified that Ms. M never expressed to him any dissatisfaction with trading on margin or with her equity positions. In addition, Ms. M received monthly statements showing the posture of her account.

In 2001, the “tech” sector of the stock market suffered a large decline. On September 7, 2001, Ms. G, through her attorney, sent a letter to Respondent alleging that she had not authorized “margin” trading and that she had not authorized the purchase of a number of the positions in her account.

Respondent investigated the complaint and communicated to her that they found it to have no merit. Subsequently, according to Claimant’s testimony, Ms. M filed a claim with the NASD against Respondent. Claimant was not a named respondent, but testified at the hearing. The claim was heard by a three-member panel which denied the claim. Claimant testified that the panel found the claim to be so lacking in merit that they awarded attorney’s fees to Respondent, a very rare event.

In the present hearing, Claimant gave extensive, credible and detailed testimony that Ms. M had elected to trade on margin with full understanding of the risks and that she had authorized the purchase of the equities involved. The accusation in Claimant’s CRD is false and untrue and the arbitrator recommends that it be expunged. It is not to the public’s benefit that these complaints remain on Claimant’s CRD.

Occurrence Number [REDACTED] (in which Mr. E is the underlying customer)

Mr. E opened an account with Respondent in March 2000 with Claimant as his financial advisor. Mr. E knew Claimant previously. At that time, Mr. E elected in his original account application to have the option of trading on “margin.” Claimant testified that Mr. E specifically told him that he wanted to make short-term gains by investing in “tech” stocks, which had risen rapidly in the last 6 to 12 months. Claimant testified that he researched tech stocks, which appeared to have good prospects, and recommended a number of them to Mr. E. Mr. E purchased about six different tech stocks for a total investment of about \$80,000.00.

During the next year, many of those stocks suffered significant losses, as did the entire tech sector. In January 2003, Mr. E wrote a complaint to NASD alleging unsuitable investments, unauthorized transactions, excessive trading, and unauthorized use of margin. By this time, Claimant was no longer employed by Respondent.

Exhibit 9 is a letter submitted by Claimant to NASD, apparently in response to an investigation on the matter. Claimant testified during the hearing that after submitting the letter he did not hear any further from NASD regarding the matter. Mr. E's complaint was forwarded to Respondent, which also did not find any evidence of wrongdoing. Mr. E then filed an arbitration complaint with NASD alleging; unsuitable investments, unauthorized trading; and unauthorized use of margin.

In July 2004, the settlement agreement (Exhibit 14) states that Respondent denies any wrongdoing. Claimant states, in his pre-hearing brief, that Respondent settled merely to avoid the cost of litigation. Claimant did not contribute to the settlement.

Regarding the unsuitable investments allegation, Claimant testified that he had discussed Mr. E's investment objectives extensively with him. Claimant testified that the stocks he recommended to Mr. E were exactly in line with what Mr. E had requested, were in line with the investment objectives stated on Mr. E's account application, and were suitable for a person with Mr. E's overall financial position.

Regarding the unauthorized trading allegation, Claimant testified that each investment had been discussed in detail with Mr. E and that Mr. E had fully authorized each investment. In addition, as documentary evidence shows, Mr. E received regular statements clearly showing the investments. (See Exhibits 13, 15 -18). There is no evidence that Mr. E ever claimed that the investments were unauthorized until over two years later when the investments had declined in value. Claimant also noted that the account was non-discretionary, requiring Mr. E's authorization for all transactions.

Regarding the excessive trading allegation, Claimant testified, and the documentary evidence supports, that there is no evidence of excessive trading. (See Exhibits 13, 15 -18). Mr. E's account only held about six equities and there is no evidence of churning or any similar activity.

Regarding the unauthorized margin trading allegation, Mr. E's account application shows that he authorized margin trading. In addition, Claimant testified, and it is supported by the documentary evidence submitted, that margin trading only occurred on two occasions when Mr. E made large cash withdrawals from his account, thereby putting the account into a margin position. (See Exhibits 13, 15 -18). The fact that the account was in a margin position was clearly shown on the account statements which Mr. E regularly received.

In addition, Claimant gave clear, detailed and credible testimony, firmly backed up by significant documentary evidence, that he did nothing wrong or improper. Based upon all of the above, the Arbitrator finds the claims untrue and false. Therefore, the Arbitrator recommends the expungement of these claims as the public does not benefit from these claims remaining on Claimant's CRD.

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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Postponement Fees

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

July 11, 2019, postponement by Claimant and Respondent	= \$50.00
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Total Postponements Fees	= \$50.00
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The Arbitrator has assessed \$50.00 of the postponement fees to Claimant.

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
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Claimant submitted one (1) discovery-related motion

Total Discovery-Related Motion Fees	= \$200.00
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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 14, 2019	1 session
One (1) hearing session on expungement request @ \$50.00/session	= \$50.00
Hearing Date: August 14, 2019	1 session
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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

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

Philip Aaron Tymon
Sole Public Arbitrator

08/29/2019

Signature Date

August 29, 2019

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