

**Award**  
**FINRA Office of Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimants

██████████  
██████████  
██████████  
██████████

Case Number: ██████████

vs.

Respondent

UBS Financial Services Inc.

Hearing Site: Los Angeles, California

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Nature of the Dispute: Associated Persons vs. Member

**REPRESENTATION OF PARTIES**

For Claimants ██████████, ██████████ and ██████████  
██████████ collectively "Claimants": Dochter Kennedy MBA, J.D. and  
Erica J. Harris, Esq., AdvisorLaw, LLC, Westminster, 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 9, 2018.  
Claimants signed the Submission Agreement: January 9, 2018.

Statement of Answer filed by Respondent on or about: March 7, 2018.  
Respondent signed the Submission Agreement: January 16, 2018.

**CASE SUMMARY**

Claimants asserted a claim seeking expungement of a FINRA arbitration case ("Underlying Arbitration") from their respective Central Registration Depository ("CRD") records: occurrence number ██████████; occurrence number ██████████ for ██████████; and occurrence number ██████████.

In the Statement of Answer, Respondent advised that it will not oppose Claimants' expungement request.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested:

1. Expungement of the Underlying Arbitration 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 Arbitration 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 of compensatory damages or any amount.

At the initial pre-hearing conference ("IPHC") and during the expungement hearing, Claimants each withdrew their request for \$1.00 in damages against Respondent.

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

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

In the IPHC Order, the Arbitrator requested that Claimant provide any settlement documents in the Underlying Arbitration; a current copy of Claimants' BrokerCheck® Reports; and notice to the customer in the Underlying Arbitration ("Customer") of the expungement request and hearing.

On October 8, 2018, Claimants filed notice that the Statement of Claim and notice of the expungement hearing was served on the Customer.

On October 16, 2018, Claimants filed an Affidavit of Service of the Statement of Claim on the Customer.

On November 8, 2018, Claimants filed additional documentation, stating that they have been in contact with Respondent, and Respondent has chosen to not participate in the expungement proceedings.

On November 9, 2018, Claimants filed a formal follow-up notice to the Customer, advising that the expungement hearing had been rescheduled for earlier time on the same day.

The Arbitrator conducted a recorded telephonic hearing on November 13, 2018 so the parties could present oral argument and evidence on Claimants' request for expungement. Respondent did not participate in the expungement hearing and, as stated in the Statement of Answer, did not contest the expungement request. The Customer did not appear at the expungement hearing. The Arbitrator found that the Customer was served with the Statement of Claim and received notice of the expungement hearing.

The Arbitrator reviewed Claimants' BrokerCheck® Reports.

The Arbitrator reviewed the settlement documents for the Underlying Arbitration, considered the amount of payments made to any party, and considered other relevant terms and conditions of the settlements. The Arbitrator noted that the settlement of the Underlying Arbitration was not conditioned on the Customer not opposing the expungement request. The Arbitrator also noted that Claimants did not contribute to the settlement amount. The Arbitrator found that the Underlying Arbitration was settled for far less than the damages alleged by the Customer, and that Claimants were not a party to the settlement and were dismissed from the Underlying Arbitration, prior to the settlement.

By letter dated December 21, 2018, FINRA Office of Dispute Resolution advised that its records showed that Claimants requested expungement in the Underlying Arbitration, which settled. The Arbitrator determined that the Panel in the Underlying Arbitration did not substantively rule on their expungement requests.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: testimony of each Claimant; Claimants' testimony regarding the investment history of the Customer; the number of meetings between the Customer and Claimants; the Settlement Agreement between the Customer and Respondent; the reasons for settlement; the fact that the Customer had knowledge of each investment both prior to and after execution.

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:
  - a. Occurrence number [REDACTED] from the registration records maintained by the CRD for Claimant [REDACTED] (CRD# [REDACTED]);
  - b. Occurrence number [REDACTED] from the registration records maintained by the CRD for Claimant [REDACTED] (CRD# [REDACTED]); and
  - c. Occurrence number [REDACTED] from the registration records maintained by the CRD for Claimant [REDACTED] (CRD# [REDACTED]), with the understanding that, pursuant to Notice to Members 04-16, Claimants [REDACTED], [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 claim, allegation, or information is false.

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

Testimony and other evidence showed that Claimants, in recommending the investments that were the subject of the Underlying Arbitration, followed the investment objectives and risk tolerance of the Customer. Losses were as a result of the financial downturn and not as a result of anything done by Claimants. As a result of this conclusion, allowing the information on the Claimants' BrokerCheck® will be harmful to 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
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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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#### **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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Claimants submitted one discovery-related motion

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Total Discovery-Related Motion Fees	= \$200.00
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The Arbitrator has assessed \$200.00 of the discovery-related motion 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 arbitrators, including a pre-hearing conference with the arbitrator 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, 2018	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$50.00
Hearing Date: November 13, 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 jointly and severally to Claimants.

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

**ARBITRATOR**

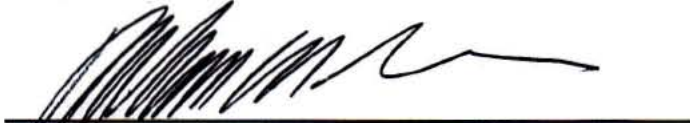
Milton N. Gross

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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**



Milton N. Gross  
Sole Public Arbitrator

12/24/18  
Signature Date

December 24, 2018  
Date of Service (For FINRA Office of Dispute Resolution office use only)