

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

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In the Matter of the Arbitration Between:

Claimant

Case Number

vs.

Respondent

Hearing Site: Boston, Massachusetts

UBS Financial Services Inc.

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant [REDACTED]: Harris Freedman, Esq., AdvisorLaw, LLC,  
Westminster, Colorado.

For Respondent UBS Financial Services Inc.: Consuelo Mejer, Esq., Bressler, Amery &  
Ross, P.C., New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: May 9, 2018.

[REDACTED] signed the Submission Agreement: May 9, 2018.

Statement of Answer filed by Respondent on or about: June 29, 2018.

UBS Financial Services Inc. signed the Submission Agreement: May 10, 2018.

**CASE SUMMARY**

Claimant asserted the following cause of action: Expungement.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

1. Expungement of the Occurrences 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 Occurrences from his CRD record pursuant to Rule 2080(b)(1)(C) as the claim, allegation, or information is false.

3. An award of damages in the amount of \$1.00 from the Respondent.
4. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent took no position with regards to the request for expungement relief. Respondent objects to Claimant's request for one dollar in compensatory damages. Claimant has made no allegation that he suffered harm or damages due to Respondent's proper reporting of the complaints. Accordingly, Claimant's request for damages, as limited as it may be, is unfounded and should be denied.

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

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

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

The Arbitrator conducted a recorded telephonic hearing on December 6, 2018 so the parties could present oral argument and evidence on [REDACTED] request for expungement.

Claimant provided FINRA Office of Dispute Resolution with proof that he notified the customers related to occurrence numbers [REDACTED] and [REDACTED] of the expungement request and of their right to participate and testify at the expungement hearing and included a copy of the Statement of Claim with the notice.

The customers did not participate in the expungement hearing and did not contest the request for expungement.

The Arbitrator reviewed the BrokerCheck® Report for [REDACTED]. The Arbitrator did not review the Settlement Agreements. On or about December 7, 2018, Claimant's counsel provided an Affidavit stating that the Settlement Agreements were not available and that his attempts to retrieve the Settlement Agreements were unsuccessful given the length of time from the events giving rise to the alleged claims. The Arbitrator relied on Claimant's testimony and considered the amount of payments made to the customers. The Arbitrator noted that the settlements were not conditioned on Claimant not opposing the request for expungement. The Arbitrator also noted that [REDACTED] contributed a nominal amount to the settlement related to occurrence number [REDACTED], but [REDACTED] denied under oath, the merits of the claims and settled to avoid legal expenses.

The Arbitrator noted that [REDACTED] 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 and Claimant's testimony.

## AWARD

After considering the pleadings, the testimony and evidence presented at the 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 registration records maintained by the Central Registration Depository ("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, the Arbitrator has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; and the claim, allegation, or information is false.

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

Based on the evidence adduced during the hearing held on December 6, 2018, including the Claimant's testimony under oath, the Arbitrator finds that the Claimant is entitled to expungement of each of the identified claims on the basis that the claims, individually and collectively as they arise from the same operative facts, are clearly erroneous and each of the claims is false.

The determination is made upon the finding that the Claimant conducted adequate initial and continuing research into the Work Recovery, Inc., stock, disclosed the risks of a speculative stock to the customers, determined that they were sophisticated investors, understood the potential risks, and the purchase was within their respective risk tolerances as disclosed to him. To the extent losses were incurred by the customers who filed the complaints, those losses were caused directly by the misrepresentations and fraud of the executives of Work Recovery, who misled the auditors, the public, the purchasers of shares, the customers, including the Claimant, his family members and friends. While the losses were regrettable, the Claimant's conduct was not the cause of the loss, and the allegations to the contrary as appearing in the complaints disclosed on the BrokerCheck report were clearly erroneous and false.

## FEES

Pursuant to the Code of Arbitration Procedure, 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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent UBS Financial Services Inc. 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:

October 30, 2018, postponement by Claimant	=\$ 50.00
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Total Postponements Fees	=\$ 50.00
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The Arbitrator has assessed the \$50.00 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 (1) discovery-related motion

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Total Discovery-Related Motion Fees	=\$200.00
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The Arbitrator has assessed the \$200.00 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, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) pre-hearing sessions with a single arbitrator @ \$50.00/session	= \$150.00
Pre-hearing conferences: August 27, 2018	1 session
October 18, 2018	1 session
October 30, 2018	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing Date: December 6, 2018	1 session

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Total Hearing Session Fees	= \$200.00
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The Arbitrator has assessed the \$200.00 hearing session fees to Claimant.

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



**ARBITRATOR**

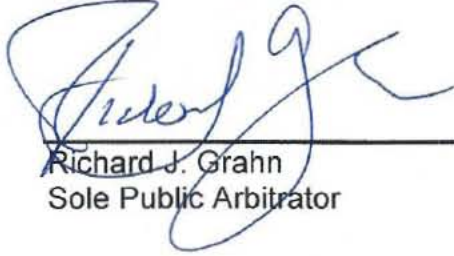
Richard J. Grahn

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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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Richard J. Grahn  
Sole Public Arbitrator

12/28/18

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Signature Date

**January 2, 2019**

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