

**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: Boston, Massachusetts

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant ██████████: Harris Freedman, Esq. and Dochter Kennedy, M.B.A., J.D., AdvisorLaw LLC, Westminster, Colorado.

For Respondent UBS Financial Services Inc.: Rafael E. Rosario, Jr., Esq., Bressler, Amery & Ross, P.C., New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: March 10, 2018.

██████████ signed the Submission Agreement: March 9, 2018.

Statement of Answer filed by Respondent on or about: May 1, 2018.

UBS Financial Services Inc. signed the Submission Agreement: March 14, 2018.

**CASE SUMMARY**

Claimant asserted the following cause of action: expungement.

Unless specifically admitted in the Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of occurrence number ██████████; compensatory damages in the amount of \$1.00; and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested that Claimant's request for compensatory damages be denied and all forum fees be assessed against Claimant. Respondent did not oppose Claimant's request for expungement of occurrence number ██████████

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

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

The Arbitrator conducted a recorded telephonic hearing on December 12, 2018 so the parties could present oral argument and evidence on Claimant [REDACTED] request for expungement.

Claimant provided the FINRA Office of Dispute Resolution ("FINRA") with proof that he served the guardian of the customer in the underlying complaint in occurrence number [REDACTED] with notice of his expungement request and notice of the customer's right to participate and testify at the expungement hearing. On November 29, 2018, Claimant notified FINRA that the customer in the underlying case is deceased. The customer's guardian did not participate in the expungement hearing and did not contest the request for expungement.

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

The Arbitrator reviewed the BrokerCheck® Report for [REDACTED] and the settlement documents related to occurrence number [REDACTED], considered the settlement terms, considered the payment made to the customer in the underlying complaint, and considered the other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on the customer not opposing the request for expungement. The Arbitrator noted that [REDACTED] did not contribute to the settlement amount.

The Arbitrator noted that [REDACTED] did not previously file a claim requesting expungement of occurrence number [REDACTED].

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the Statement of Claim; Respondent's Statement of Answer; the Claimant's BrokerCheck® Report, Claimant's testimony, party submissions, and the Settlement Agreement.

### **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 number [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:

After reviewing all the documents including the complaint and the answer and Mr. [REDACTED] testimony, which I found to be credible, I find these allegations to be false and clearly erroneous. Mr. [REDACTED] performed his duty with due diligence and even brought in an estate planning attorney to help the underlying customer out. At no time did he commit fraud or was he negligent with the customer's account. On the contrary, Mr. [REDACTED] put together a comprehensive and knowledgeable team to build the customer's estate plan. There were multiple meetings and conversations with the customer and her attorney, both orally and in writing. Mr. [REDACTED] had confidence that the transactions at issue would be found reasonable and fully consistent with well accepted estate planning and any SRO rules and regulations. By all accounts, there was evidence that the customer and her family were pleased with the arrangements of the estate plan. The Claimant testified that the claim was settled as a business decision. There was no evidence of fraud, breach of fiduciary duty or negligence.

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

### **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, UBS Financial Services Inc. 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, 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: July 19, 2018	1 session	
One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing Date: December 12, 2018	1 session	
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Total Hearing Session Fees	= \$	100.00

The Arbitrator has assessed the \$100.00 hearing session fees to Claimant.

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

**ARBITRATOR**

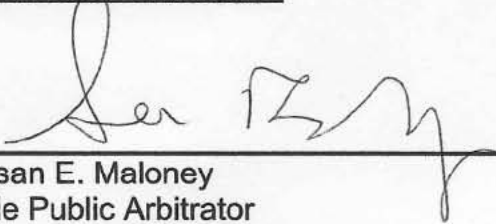
Susan E. Maloney

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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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Susan E. Maloney  
Sole Public Arbitrator

12/20/18

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Signature Date

December 20, 2018

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