

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

Case Number: [REDACTED]

vs.

Respondent

UBS Financial Services Inc.

Hearing Site: Atlanta, Georgia

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant [REDACTED] ("Claimant"): Michelle M. Atlas, Esq. and Dochter D. Kennedy, MBA, J.D., AdvisorLaw LLC, Westminster, Colorado.

For Respondent UBS Financial Services Inc. ("Respondent"): Joelle A. Simms, Esq., Bressler, Amery & Ross, P.C., Fort Lauderdale, Florida.

CASE INFORMATION

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

Claimant signed the Submission Agreement: April 9, 2018.

Statement of Answer filed by Respondent on or about: May 30, 2018.

Respondent signed the Submission Agreement: April 10, 2018.

CASE SUMMARY

Claimant requested expungement of three customer disputes ("Underlying Claims") including two FINRA arbitration cases, occurrence numbers [REDACTED] and [REDACTED] and one customer complaint, occurrence number [REDACTED] from his Central Registration Depository ("CRD") records.

In the Statement of Answer, Respondent advised that it did not oppose Claimant's request for expungement and that it would not attend any hearings in the matter.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Claims from his CRD records pursuant to:
 - a. FINRA Rule 2080(b)(1)(A) as the claim, allegation or information is factually impossible or clearly erroneous; and
 - b. FINRA Rule 2080(b)(1)(C) as the claim, allegation or information is false;
2. Damages in the amount of \$1.00 from Respondent; and
3. Any and all other relief that the Arbitrator deems just and equitable.

Respondent did not include any separate relief requests in the Statement of Answer.

During the expungement hearing, Claimant withdrew his request for damages in the amount of \$1.00 from Respondent.

OTHER ISSUES CONSIDERED AND DECIDED

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

On July 5, 2018, the Arbitrator filed an Order to Notify Customers. In the Order, the Arbitrator directed Claimant to provide to the customers in the Underlying Claims ("Customers"): a copy of the Statement of Claim; notice of the Initial Pre-hearing Conference's ("IPHC") date and time; contact information of the FINRA staff member assigned to the case; and a copy of a Notice to Customers prepared by the Arbitrator which outlined the Customers right to participate in the expungement proceedings. The Arbitrator further requested that Claimant submit documents showing his compliance with the Order prior to the IPHC.

The IPHC was held on July 31, 2018. That same day, the Arbitrator filed a Second Order to Notify Customers. In the Order, the Arbitrator directed Claimant to provide to the Customers all of the information required in the July 5, 2018 Order, and to give the Customers notice of the expungement hearing date, and telephone number and pass code information to participate in the telephonic expungement hearing. The Arbitrator also directed Claimant to advise the Customers that the expungement hearing date may be postponed if they are unable to attend the date scheduled.

By letters dated September 26, 2018, Claimant provided notice to the Customers regarding only the Statement of Claim and notice of the expungement hearing.

By Affidavit dated October 3, 2018, a representative for the customer company in occurrence number [REDACTED] ("Mr. D"), advised that he supported Claimant's request for expungement. Mr. D's mother was initially Claimant's client and after Mr. D took over his mother's estate he became Claimant's client.

By letter dated October 9, 2018, the customer in occurrence number [REDACTED] ("Mr. G") stated:

"I would like very much for the allegations made by me against Mark David [REDACTED] remain as a permanent disclosure on his records. His record speaks for itself. The remarks and claims I made in 1989 should be on Mr. [REDACTED]"

records as long as he lives and especially as long as he is employed in the securities industry.”

By Affidavit dated October 10, 2018, Claimant advised that the Customers had been served with the Statement of Claim.

By letters dated October 22, 2018, Claimant advised the Customers that the expungement hearing date had been postponed and that he will inform them of the new date once it has been scheduled.

By letters dated January 16, 2019, Claimant provided notice of the new expungement hearing date to the Customers. By Affidavit dated January 24, 2019, Claimant advised that he provided notice of the expungement hearing to the Customers.

The Arbitrator conducted a recorded telephonic hearing on February 26, 2019 so the parties could present oral argument and evidence on Claimant’s requests for expungement.

As previously advised, Respondent did not participate in the expungement hearing and did not contest the request for expungement.

None of the Customers participated in the expungement hearing. As stated earlier, Mr. D supported Claimant’s expungement request and Mr. G opposed the request. The Arbitrator determined that the trustee of the complainant trust in occurrence number [REDACTED] (“Mr. H”) had been properly served with the Statement of Claim and received due notice of the hearing.

The Arbitrator reviewed Claimant’s BrokerCheck® Report.

The Arbitrator noted that both occurrence numbers [REDACTED] and [REDACTED] were settled, however, Claimant did not provide any settlement documents. Therefore, the Arbitrator could not consider the amount of payments made to any party, and any other relevant terms and conditions of the settlement. The Arbitrator also could not determine if the settlements were conditioned on Messrs. D and H not opposing the requests for expungement, however, the Arbitrator noted that the settlement of occurrence number [REDACTED] occurred prior to the effective date of FINRA Rule 2081.

Based on Claimant’s testimony, the Arbitrator noted that Claimant did not participate in negotiating the settlements nor did he contribute to the amount paid. The Arbitrator also noted that Claimant was unable to secure copies of the settlement agreements despite his good faith efforts, as summarized in Claimant’s Affidavit dated February 26, 2019. In the Affidavit, Claimant advised that he never received copies of the settlement agreements because he was not a party to the agreements, and that Respondent confirmed that the settlement agreements were not in its possession, custody or control and could not be located following a good-faith search of its files. The Arbitrator determined to proceed with determining Claimant’s expungement requests despite not reviewing the settlement agreements.

The Arbitrator noted that occurrence number [REDACTED] settled for \$100,000.00 of the \$144,296.00 in alleged damages. The Arbitrator also noted that occurrence number [REDACTED] settled for \$30,000.00 of the \$90,000.00 in alleged damages. The Arbitrator found these settlement amounts to be relatively high but not indicative of any wrongdoing by Claimant. Both settlements involved Lehman Brothers notes which collapsed with the Lehman Brothers bankruptcy. The bankruptcy was unexpected in the financial world and was not caused by or related to Claimant.

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: Mr. D's Affidavit dated October 3, 2018 and Claimant's testimony during the expungement hearing.

The Arbitrator has agreed that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, the testimony and evidence presented at the expungement 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 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 for both occurrence numbers [REDACTED] and [REDACTED]

The claim, allegation, or information is false.

Occurrence Number [REDACTED]

The Arbitrator has made the above Rule 2080 finding based on the following reason:

In Mr. D's Affidavit he stated that there was a miscommunication likely attributable to his mother's limited comprehension of the English language. As stated earlier, she was Claimant's client until Mr. D took over her estate. The Arbitrator found that the claim was based on the collapse of Lehman Brothers and not Claimant's actions in any way. Therefore, the Arbitrator found that there was no misrepresentation by Claimant, and the claim/allegation was false.

Occurrence Number [REDACTED]

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

Based on Claimant's testimony, and the lack of any conflicting information from Mr. H, despite being given the opportunity to participate in the expungement hearing, the Arbitrator finds that Claimant committed no wrongdoing. The Arbitrator found that the claim was based on the collapse of Lehman Brothers and not Claimant's actions in any way. Therefore, the Arbitrator found that there was no misrepresentation by Claimant, and the claim/allegation was false.

2. Claimant's request for expungement of occurrence number [REDACTED] is denied based on Mr. G's objection, and because the Arbitrator cannot determine the credibility of what happened since the matter dates back to 2004.
3. 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:

October 24, 2018, postponement by Claimant	= \$ 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.

Last Minute Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within ten calendar days before the start of a scheduled hearing session:

October 23, 2018, postponement requested by Claimant	= \$ 600.00
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Total Last Minute Cancellation Fees	= \$ 600.00

The Arbitrator has assessed \$600.00 of the last minute cancellation 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 Panel 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: July 31, 2018	1 session
One (1) hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing Date: February 26, 2019	1 session

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

Harry G. Mason

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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

//s// Harry Mason

Harry G. Mason
Sole Public Arbitrator

March 14, 2019
Signature Date

March 19, 2019
Date of Service (For FINRA Office of Dispute Resolution office use only)