

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

██████████

Case Number: ██████████

vs.

Respondent

Raymond, James & Associates, Inc. and
UBS Financial Services Inc.

Hearing Site: Houston, Texas

Nature of the Dispute: Associated Person vs. Members

REPRESENTATION OF PARTIES

For Claimant ██████████ (“Claimant”): Dochter Kennedy, Esq. and Christopher Cummins, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Raymond, James & Associates, Inc. (“Raymond James”): Stanton Fears, Esq., Raymond James & Associates, Inc., St. Petersburg, Florida.

For Respondent UBS Financial Services Inc. (“UBS”): Joelle A. Simms, Esq., Bressler Amery Ross, Fort Lauderdale, Florida.

CASE INFORMATION

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

Claimant signed the Submission Agreement: August 9, 2018.

Statement of Answer filed by Raymond James on or about: September 4, 2018.

Raymond James signed the Submission Agreement: September 19, 2018.

Statement of Answer filed by UBS on or about: October 3, 2018.

UBS signed the Submission Agreement: August 22, 2018.

CASE SUMMARY

In the Statement of Claim, Claimant asserted a claim seeking expungement of customer complaints, Occurrence Numbers ██████████ and ██████████ from his registration records maintained by the Central Registration Depository (“CRD”).

In the Statement of Answer, Raymond James did not oppose Claimant’s request for expungement and notified that it would not participate in the matter.

In the Statement of Answer, UBS did not oppose Claimant's request for expungement and notified that it would not participate in the matter.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers [REDACTED] and [REDACTED] from his CRD, \$1.00 in compensatory damages, and any and all other relief as the Arbitrator deems just and equitable.

Raymond James and UBS did not request any relief in their Statement of Answers.

On record at the hearing, Claimant withdrew his request for \$1.00 in compensatory damages.

OTHER ISSUES CONSIDERED AND DECIDED

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

On or about January 11, 2019, in compliance with the Initial Pre-Hearing Conference Order, Claimant filed copies of the letters sent to the customers for Occurrence Numbers [REDACTED] and [REDACTED] providing the customers with the Statement of Claim, notice of the expungement hearing date and time, and the option to participate in the expungement hearing.

The Arbitrator conducted a recorded telephonic hearing on February 25, 2019, so the parties could present oral argument and evidence on Claimant's request for expungement. Raymond James and UBS did not participate in the expungement hearing. The customers did not participate in the expungement hearing.

The Arbitrator reviewed the BrokerCheck® Report for Claimant and the settlement agreement for Occurrence Number [REDACTED] 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 the customers not opposing the request for expungement. The Arbitrator also noted that Claimant did not contribute to the settlement amounts.

The Arbitrator determined that Claimant made a good faith effort to obtain a copy of the settlement documents for Occurrence Number [REDACTED]. Claimant never had a copy of the settlement agreement because he did not contribute to the settlement. UBS searched its records and could not find a copy of the settlement agreement. Based upon the testimony and representations of Claimant, the Arbitrator considered the amount of payments made to any party and noted that Claimant did not contribute to the settlement amount and that the settlement was not conditioned on Claimant not opposing the request for expungement.

The Arbitrator noted that Claimant 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: Claimant's testimony; Claimant's, Raymond James' and UBS's pleadings; Claimant's BrokerCheck® Report; the settlement agreements concerning both customers' claims; notice of hearing provided to both customers; JC Bradford Customer Account Agreement, and BCM Account Application.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, and post-hearing submission, 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 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 factually impossible or clearly erroneous; and
- The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and
- The claim, allegation, or information is false.

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

The Claimant "inherited" both of the customers from a colleague who had been their advisor. As to both claims, the evidence demonstrated that the customers' alleged losses were not caused by the Claimant, but by their own decisions to ignore sound advice given and explained to them by Claimant. In fact, one customer insisted that the Claimant place stock trades on his behalf against Claimant's recommendation and the other customer independently directed Claimant to purchase additional energy sector stock despite Claimant's advice that he diversify his portfolio.

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

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

**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 parties, Raymond James and UBS are each assessed the following:

Raymond James:

Member Surcharge = \$ 150.00

UBS:

Member Surcharge = \$ 150.00

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: December 03, 2018 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing Date: February 25, 2019 1 session

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.

