

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
William Keith Phillips

Case Number: 20-01142

vs.

Respondents
Morgan Stanley DW Inc.
UBS Financial Services Inc.

Hearing Site: Nashville, Tennessee

Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

Nature of the Dispute: Associated Person vs. Members

REPRESENTATION OF PARTIES

For Claimant William Keith Phillips: Michael O’Gara, Esq. and Doctor Kennedy, MBA, J.D., AdvisorLaw, LLC Westminster, Colorado.

For Respondent Morgan Stanley DW Inc. (“MSDW”): Trae Myer, Esq., Morgan Stanley, Saint Petersburg, Florida.

For Respondent UBS Financial Services Inc. (“UBS”): Omar Perez, Esq., UBS Business Solutions US, LLC, Nashville, Tennessee.

CASE INFORMATION

Statement of Claim filed on or about: April 7, 2020.

William Keith Phillips signed the Submission Agreement: April 7, 2020.

Statement of Answer filed by Respondent MSDW on or about: April 9, 2020.

MSDW signed the Submission Agreement: April 9, 2020.

Statement of Answer filed by Respondent UBS on or about: May 4, 2020.

UBS signed the Submission Agreement: June 23, 2020.

CASE SUMMARY

In the Statement of Claim, Claimant asserted a claim seeking expungement of customer dispute information from registration records maintained by the Central Registration Depository (“CRD”).

In the Statement of Answer, Respondent MSDW denied any material allegations of wrongdoing asserted in the Statement of Claim against it but did not oppose Claimant's expungement request.

In the Statement of Answer, Respondent UBS did not oppose Claimant's expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Numbers 1072387, 1230366 and 1207105; compensatory damages in the amount of \$1.00 from Respondents; and any and all other relief that the Arbitrator deemed just and equitable.

In the Statement of Answer, Respondent MSDW objected to Claimant's request for compensatory damages in the amount of \$1.00.

In the Statement of Answer, Respondent UBS objected to Claimant's request for compensatory damages in the amount of \$1.00.

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

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

On September 17, 2020, August 18, 2020, and March 15, 2021, Claimant filed Affidavits confirming that the customers in Occurrence Numbers 1072387 ("Customer A"), 1230366 ("Customer B") and 1207105 ("Customer C"), hereinafter collectively referred to as the "Customers", were served with the Statement of Claim and notice of the dates and times of the expungement hearings.

The Customers did not file a response to Claimant's notices.

On April 8 and 12, 2021, representatives of the Customers at the time that preceded the dispute filed Affidavits noting their awareness and support of Claimant's request for expungement of the occurrences.

The Arbitrator conducted a recorded, telephonic hearing on April 15, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent MSDW participated in the expungement hearing and, as stated in the Statement of Answer, did not oppose the request for expungement.

Respondent UBS and the Customers did not participate in the expungement hearing. The Arbitrator found that Respondent UBS and the Customers had notice of the expungement request and hearing.

The Arbitrator reviewed Claimant's BrokerCheck® Report. The Arbitrator noted that a prior arbitration panel or court did not previously rule on expungement of the same occurrences in the CRD.

The Arbitrator noted that Respondents UBS and MSDW both sent emails, which served as affirmations, that they had performed a "reasonable search" for the requested Settlement Agreements for all occurrences. Respondents were granted additional time to provide the requested discovery and a postponement of the originally scheduled expungement hearing to search for the Settlement Agreements. On March 26, 2021 and April 21, 2021, Claimant filed an affidavit and a notice reflecting that efforts to get the Settlement Agreements for the occurrences from Respondents and the law firms representing the Customers at the time of the dispute had proven unsuccessful. Therefore, there were no settlement documents to review for any of the occurrences.

Based on Claimant's sworn testimony and evidence provided during the hearing, the Arbitrator considered the amount of payment made to any party to the settlements for all occurrences, considered other relevant terms and conditions of the settlements, and noted that the settlements were not conditioned on any party to the settlements not opposing the expungement request. The Arbitrator further noted that Claimant credibly testified that he did not contribute to the settlement amounts.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's Pre-hearing Brief; Exhibit 9, Customer C's attorney's letter to Claimant and other co-respondents; and Exhibit 10, the Statement of Claim and Statement of Answer for the underlying arbitration in Occurrence Number 1207105.

AWARD

After considering the pleadings, the testimony and evidence presented at the expungement hearing, and any post-hearing submissions, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant William Keith Phillips's (CRD Number 1447676) request for expungement of Occurrence Numbers 1072387 and 1230366 from his registration records maintained by the CRD is denied.
2. The Arbitrator recommends the expungement of all references to Occurrence Number 1207105 from registration records maintained by the CRD for Claimant William Keith Phillips with the understanding that, pursuant to Notice to Members 04-16, Claimant 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.

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

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

As to Occurrence Number 1207105:

The claim is clearly erroneous. Customer C claimed the renewed contract/agreement was virtually identical to the original and was issued by Respondent MSDW. However, a letter from the law firm for Customer C clearly states that they would "...draft a revised contract reflecting the new agreement..." and "... the Trustees additionally have elected to extend the commitment subject to the terms of the contract for five years." Any claims that fault Claimant for omissions in the contract/agreement are erroneous as it was drafted by Customer C's law firm which raised no red flags pertaining to the original.

Also, Claimant was not involved in the alleged investment-related sales practice violations. Claimant was not involved in the claims pertaining to sales practices which were under the purview of Respondents UBS/PaineWebber and MSDW.

Based on Claimant's testimony, responses to my questions, and documents provided with Claimant's pre-hearing brief, I am confident in my decision to grant expungement of Occurrence Number 1207105 from Claimant's CRD/BrokerCheck® records. In my opinion, had this claim gone forward to a hearing on the merits, it is highly probable that the Panel would have decided for Claimant. All three occurrences had the same co-respondents. Occurrence 1230366 was settled without Customer B filing a Statement of Claim. All three occurrences were settled for "business reasons." Claimant was not required by the co-respondents to contribute to any of the settlement amounts. Claimant and his counsel made multiple attempts to acquire supporting documents for all occurrences and supported those attempts with postal receipts and emails. Emails from Respondents UBS and MSDW served as affirmations that a "reasonable search for requested discovery documents" were made but were unsuccessful. The documents requested for all three occurrences included, but were not limited to: Statements of Claim, Answers to Statements of Claims and Settlement Statements. None of the requested documents were forthcoming from Respondents UBS and MSDW even after being granted an extension for further searches. Claimant was able to supply a copy of the Statement of Claim and Answer for the occurrence for which I granted expungement. Without any other supporting documents to either confirm or disprove Claimant's testimony, I was left in abeyance and hereby deny expungement for Occurrence Numbers 1072387 and 1230366.

Testimony presented during the expungement hearing, and exhibits contained in the Pre-hearing brief (specifically the original Statement of Claim and Answer) supported Claimant's contention that he was not involved in the disputed sales practices. Those practices include claims made against Claimant for: fee arrangements; non-compliance with the Statement of Investment Objectives; asset allocation; and unsuitable/inappropriate investments.

Claimant also claimed that the second agreement/contract was presented to them as a "virtual duplication" of the original regarding soft versus hard dollar fees but, instead omitted

additional fees that were later imposed. The Statement of Claim stated: "The original contract with the Phillips Group was executed on or about March 22, 1996, (the "Agreement"), and [Customer C] continued its relationship with The Phillips Group through May 2003. On or about April 6, 2000, after The Phillips Group moved to Respondent MSDW, [Customer C] voted to retain their services, and a new Consulting Services Agreement was signed with Respondent MSDW on or about April 7, 2000, (the "second Agreement.") Upon information and belief, this new agreement, drafted by Respondent MSDW, "was virtually identical to the first agreement." (Claimant's Pre-Hearing Brief, Exhibit 10)

On or about October 27, 1999, an attorney for the law firm representing Customer C, sent a letter addressed to Claimant and his co-respondents. The content and message of the letter was brief and concisely stated: "Please be advised that the Trustees for [Customer C] have selected Paine Webber, Inc. to remain as the financial consultant for [Customer C's] pension plan. WE WILL DRAFT A REVISED CONTRACT REFLECTING THE NEW AGREEMENT AND FORWARD IT IN TRIPLICATE TO YOU FOR YOUR SIGNATURE (emphasis added). The Trustees additionally have elected to extend the commitment subject to the terms of the contract for five years." (Claimant's pre-hearing brief, Exhibit 9)

Customer C's claim that the agreement/contract was "drafted by Morgan Stanley" and was "virtually identical" is clearly erroneous. The letter of the attorney representing Customer C reflects that he will draft a revised agreement and submit it for Paine Webber's signature. Therefore, the revised agreement cannot be viewed as "virtually identical." Also, any red flags regarding fees were the responsibility of Customer C's law firm to address as well as the Trustees who chose to select Paine Webber, as well as Claimant, to remain as the financial consultants for Customer C's pension plan. Had Respondents UBS and MSDW not settled the claim, this erroneous information may have been sufficient for an arbitration panel to decide for Claimant.

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 Dispute Resolution Services 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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as parties, Respondents MSDW and UBS are each assessed the following:

Member Surcharge = \$ 150.00

Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

December 15-17, 2020, postponement requested by Claimant = WAIVED

Total Postponement Fee = WAIVED

The Arbitrator has waived the total postponement 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, which 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 27, 2020 1 session

Two (2) hearing sessions on expungement request @ \$50.00/session = \$ 100.00
Hearing: April 15, 2021 1 session

Total Hearing Session Fees = \$ 150.00

The Arbitrator has assessed the total hearing session fees to Claimant.

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

ARBITRATOR

Neil Harvey Smith

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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

Neil Harvey Smith

Neil Harvey Smith
Sole Public Arbitrator

04/27/2021

Signature Date

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April 28, 2021

Date of Service (For FINRA Dispute Resolution Services use only)