

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

James Preston Shoffner, Jr.

Case Number: 20-01903

vs.

Respondent

UBS Financial Services Inc.

Hearing Site: Denver, Colorado

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. Member

This case was administered under the Special Proceeding option for simplified cases.

REPRESENTATION OF PARTIES

For Claimant James Preston Shoffner, Jr. (“Claimant”): Zachary T. Hayes-Macaluso, Esq., FA Expungement, LLC, Denver, Colorado.

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

CASE INFORMATION

Statement of Claim filed on or about: June 16, 2020.

Claimant signed the Submission Agreement: June 16, 2020.

Statement of Answer filed by Respondent on or about: June 26, 2020.

Respondent signed the Submission Agreement: June 18, 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 did not oppose Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of Occurrence Number 1348202 pursuant to a finding that the claims, allegations and information are factually impossible and clearly erroneous in accordance with FINRA Rule 2080(b)(1)(A);
2. Expungement of Occurrence Number 1348202 pursuant to a finding that the claims, allegations and information are false in accordance with FINRA Rule 2080(b)(1)(C); and
3. Compensatory damages in the amount of \$1.00 from Respondent.

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

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 November 16, 2020, Claimant advised that the customer in Occurrence Number 1348202 ("Customer") was served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded, telephonic hearing on February 25, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent did not participate in the expungement hearing.

The Customer also did not participate in the expungement hearing. The Arbitrator found that the Customer 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 occurrence in the CRD.

The Arbitrator noted that the dispute related to Occurrence Number 1348202 was not settled and, therefore, there was no settlement document to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's testimony, Claimant's BrokerCheck® Report and Statement of Answer.

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:

The Arbitrator recommends the expungement of all references to Occurrence Number 1348202 from registration records maintained by the CRD for Claimant James Preston

Shoffner, Jr. (CRD Number 2242252) with the understanding that, pursuant to Notice to Members 04-16, Claimant James Preston Shoffner, Jr. 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 claim, allegation, or information is false.

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

The great preponderance of the evidence shows: (a) the Customer would have automatically received paperwork from Respondent’s New Jersey office telling him how to pay back the credit line and would not have received such paperwork from Claimant; (b) Claimant told the Customer he could probably get a better interest rate from a bank on account of the modest amount of assets under management and did not say that the rate provided was the best rate available; (c) Claimant immediately liquidated the Customer’s non-proprietary funds upon instruction from the Customer to do so; and (d) Claimant had no control over the settlement date of the funds, which generally occurs three days after liquidation. Consequently, the Arbitrator finds that the three allegations made by the Customer in Occurrence Number 1348202 are not supported by the evidence and recommends expungement of Occurrence Number 1348202 from Claimant’s CRD records because the Customer’s allegations are factually impossible, clearly erroneous and false.

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 a party, Respondent is assessed the following:

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, 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: October 7, 2020	1 session	

One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing: February 25, 2021	1 session	

Total Hearing Session Fees	= \$	100.00
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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

Anita Rae Shapiro

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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

Anita Rae Shapiro

Anita Rae Shapiro
Sole Public Arbitrator

03/11/2021

Signature Date

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March 12, 2021

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