

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimant

James Preston Shoffner Jr.

Case Number: 20-02104

vs.

Respondent

UBS Financial Services Inc.

Hearing Site: Denver, Colorado

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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 Hayes-Macaluso, Esq., FA Expungement, LLC, Denver, Colorado.

For Respondent UBS Financial Services Inc. (“Respondent”): John B. Clark, Esq., UBS Group AG, Nashville, Tennessee.

**CASE INFORMATION**

Statement of Claim filed on or about: July 2, 2020.

Claimant signed the Submission Agreement: July 2, 2020.

Statement of Answer filed by Respondent on or about: August 27, 2020.

Respondent signed the Submission Agreement: August 28, 2020.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted a claim alleging that the Form U5 filed by Respondent, as part of registration records maintained by the Central Registration Depository (“CRD”), is false and defamatory in nature.

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:

1. Expungement of the U5 Termination Disclosure found under Occurrence Number 1355008 from Claimant's CRD records pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false, and that the public disclosure is defamatory to Claimant; and
2. Compensatory damages in the amount of \$1.00 from Respondent.

In the Statement of Answer, Respondent requested:

1. Dismissal of the Statement of Claim with prejudice;
2. Costs associated with defending this action; and
3. Such other relief to which Respondent may be entitled.

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 December 11, 2020, Respondent filed a Motion to Dismiss pursuant to Rule 13206 of the Code of Arbitration Procedure ("Code"). On January 6, 2021, Claimant filed its opposition to the motion to dismiss. Respondent did not file a reply to Respondent's opposition. On January 19, 2021, the Arbitrator denied the Motion to Dismiss.

### **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. The Arbitrator recommends the expungement of the Reason for Termination and Termination Explanation in Section 3 of James Preston Shoffner Jr.'s (CRD Number 2242252) Form U5 filed by UBS Financial Services, Inc. on June 5, 2007, and maintained by the Central Registration Depository ("CRD"). The Reason for Termination shall be changed to "Other." The Termination Explanation shall be replaced with the following language: "Employment ended as a result of a misunderstanding." This directive shall apply to all references to the Reason for Termination and Termination Explanation.

The Arbitrator further recommends the expungement of all references to Occurrence Number 1355008 from the registration records maintained by the CRD for James Preston Shoffner Jr. Any "Yes" answers should be changed to "No," as applicable.

The Arbitrator recommends expungement based on the defamatory nature of the information. The above recommendations are made with the understanding that the registration records are not automatically amended. James Preston Shoffner Jr. must forward a copy of this

Award to FINRA's Credentialing, Registration, Education and Disclosure Department for review.

2. 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
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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:

April 1, 2021, postponement requested by Respondent	= \$	50.00
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Total Postponement Fees	= \$	50.00
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The Arbitrator has assessed \$25.00 of the postponement fees to Claimant.

The Arbitrator has assessed \$25.00 of the postponement fees to Respondent.

#### **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 20, 2020	1 session	

One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing: April 29, 2021	1 session	

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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**

Milton N. Gross

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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**

***Milton N. Gross***

Milton N. Gross  
Sole Public Arbitrator

**05/13/2021**

Signature Date

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May 14, 2021

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