

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

---

In the Matter of the Arbitration Between:

Claimant  
Timothy Patrick Lofton

Case Number: 20-02117

vs.

Respondents  
UBS Financial Services Inc.  
Wells Fargo Advisors Financial Network

Hearing Site: Cincinnati, Ohio

---

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

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

**REPRESENTATION OF PARTIES**

For Claimant Timothy Patrick Lofton (“Claimant”): Brian Luther, Esq., FA Expungement, LLC, Denver, Colorado.

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

For Respondent Wells Fargo Advisors Financial Network (“Wells Fargo”): Deirdre Wolff, Esq., Wells Fargo Legal Department, St. Louis, Missouri.

Hereinafter UBS and Wells Fargo are collectively referred to as (“Respondents”).

**CASE INFORMATION**

Statement of Claim filed on or about: July 3, 2020.  
Claimant signed the Submission Agreement: July 3, 2020.

Statement of Answer filed by UBS on or about: July 31, 2020.  
UBS signed the Submission Agreement: July 7, 2020.

Statement of Answer filed by Wells Fargo on or about: August 28, 2020.

Wells Fargo signed the Submission Agreement: July 13, 2020.

### **CASE SUMMARY**

In the Statement of Claim, Claimant asserted a claim seeking expungement of two customer complaints, Occurrence Numbers 1182935 and 1486146, and a civil litigation which turned into a FINRA Arbitration, Occurrence Number 1339602, (“Underlying Claims”) from his registration records maintained by the Central Registration Depository (“CRD”).

In the Statement of Answer, UBS advised that it did not oppose Claimant’s expungement request.

In the Statement of Answer, Wells Fargo advised that it did not oppose to Claimant’s expungement request.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Claims from his CRD records pursuant to a finding that the claims, allegations or information are factually impossible or clearly erroneous pursuant to FINRA Rule 2080(b)(1)(A) and that the claims, allegations or information are false pursuant to FINRA Rule 2080(b)(1)(C); and
2. Compensatory damages in the amount of \$1.00 from Respondents.

In the Statement of Answer, UBS opposed Claimant’s request for compensatory damages.

In the Statement of Answer, Wells Fargo opposed Claimant’s request for compensatory damages and requested reimbursement for FINRA fees from Claimant.

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 2, 2020, Claimant advised that he sent letters, including copies of the Statement of Claim, the Initial Pre-Hearing Conference Scheduling Order, and notice of the expungement hearing to the customer in Occurrence Number 1182935 (“Ms. C”), the customer in Occurrence Numbers 1339602 (“Estate of Ms. M”), and the daughter of the customer in Occurrence Number 1486146 (“Ms. S”), hereinafter collectively referred to as the “Customers”. On November 27, 2020, Claimant filed copies of USPS delivery confirmations.

The Arbitrator conducted a recorded, telephonic hearing on December 17, 2020 so the parties could present oral argument and evidence on Claimant’s request for expungement.

During the expungement hearing, Claimant dismissed Wells Fargo from this matter.

UBS did not participate in the expungement hearing and, as stated in the Statement of Answer, did not oppose the request for expungement.

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

By Order dated December 30, 2020, the Arbitrator asked Claimant to advise whether he intended to request expungement of 1339603. On the same date, Claimant submitted the following response:

“Claimant is seeking to expunge Occurrence Number 1339603, and that request was inadvertently left out of his Statement of Claim. Occurrence Number 1339603 is directly related to Occurrence Number 1339602; both involving the [Estate of Ms. M]. The litigation referenced in Occurrence Number 1339603 was stayed in favor of arbitration and ultimate settlement in Occurrence Number 1339602 and involved the same parties and issues.”

The Arbitrator granted Claimant’s request to include Occurrence Number 1339603 in this matter.

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 also reviewed the settlement documents for Occurrence Number 1339602 and 1339603, considered the amount of payments made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on any party to the settlement not opposing the expungement request and that Claimant contributed to the settlement amount, which was to relinquish his beneficial interest in Ms. M’s Transfer on Death account.

The Arbitrator was not able to review the settlement documents related to Occurrence Number 1182935 as Claimant was not able to locate any settlement documents. The Arbitrator found that Claimant made sufficient efforts to locate the settlement documents and based on the BrokerCheck® report, Claimant did not contribute to the settlement amount.

The Arbitrator noted that the dispute related to Occurrence Number 1486146 was not settled and, therefore, there were no settlement documents to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant’s testimony; Claimant’s CRD records; Claimant’s BrokerCheck® report; mediation and settlement agreement in Occurrence Number 1339602; and UBS’ denial letters dated January 7, 2010 and March 25, 2010 in Occurrence Number 1486146.

### **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 the Underlying Claims Occurrence Numbers 1182935, 1339602, 1339603, and 1486146, from registration records maintained by the CRD for Claimant Timothy Patrick Lofton (CRD Number 2385447) with the

understanding that, pursuant to Notice to Members 04-16, Claimant Timothy Patrick Lofton 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:

Occurrence Number 1182935 (in which Ms. C was the underlying customer)

Claimant testified that the charges about which Ms. C's son complained were a 1.5% account fee, and that there were no front or back end loads on the mutual funds purchased; that underlying the complaint was that the son was unhappy that his mother had opened the account with UBS and not with Merrill Lynch where the son has his account; and that the UBS branch manager in a private meeting with the son, at which Claimant was not present, basically fired the customer to be rid of someone who would never be satisfied. Claimant's testimony was totally consistent with UBS's statement in the BrokerCheck® Report which also said that Claimant was found to have committed no wrongdoing and was not required to pay.

Occurrence Numbers 1339602 and 1339603 (in which the Estate of Ms. M was the underlying customer)

Although the complaint by Ms. M's niece and executrix alleged fraud and forgery by Claimant regarding the Transfer on Death beneficiary of Ms. M's account (Claimant's great aunt's), that allegation was never adjudicated. Claimant testified that he agreed to settle the matter by returning \$500,000 to Ms. M's estate. This was on the advice of counsel after mediation and in the context of arbitration, and in the light of Claimant receiving \$450,000 under the new will that Ms. M had executed 11 days before her death. Claimant's testimony was consistent with the mediation report and the settlement agreement, the latter explicitly requiring that specific bequests in the new will be executed. UBS's statement in the BrokerCheck® Report about the complaint was notably nuanced about the context of the matter with no mention of fraud or forgery by Claimant. Furthermore, after the December 2007 settlement of the arbitration, UBS took no action against Claimant, but rather continued to employ him until he voluntarily changed firms in May 2009.

Occurrence Number 1486146 (in which Ms. S was the underlying customer)

Ms. S' daughter (with power of attorney) made a written complaint dated October 27, 2009 and alleged unsuitable transactions by a third-party account manager. Claimant testified that he made no recommendations and all transactions were made by the account manager who was selected by Ms. S and used a conservative style suitable to her risk tolerance and goals. Furthermore, Ms. S never lost money in her investments managed by the account manager. On January 13, 2010, UBS issued a denial letter to Ms. S and her daughter, which noted that on July 19, 2009 when Ms. S signed forms giving daughter power of attorney, Ms. S' risk profile was "moderate" and her portfolio consisted of 3% cash, 50% equities, and 47% fixed income. This does not suggest "unsuitable transactions".

**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, Wells Fargo is assessed the following:

Member Surcharge = \$ 150.00

Accordingly, as a party, UBS 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 13, 2020 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00  
Hearing Date: December 17, 2020 1 session

---

Total Hearing Session Fees = \$ 100.00

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**

John C. Aten

-

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**

***John C. Aten***

\_\_\_\_\_  
John C. Aten  
Sole Public Arbitrator

**01/14/2021**

\_\_\_\_\_  
Signature Date

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.

January 15, 2021

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