

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Mark Allen Zeller

Case Number: 20-02289

vs.

Respondent
UBS Financial Services, Inc.

Hearing Site: New York, New York

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

REPRESENTATION OF PARTIES

For Claimant Mark Allen Zeller: Amy B. Bard, Esq., Law Offices of Amy Bard, Glen Ridge, New Jersey.

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: July 20, 2020.
Mark Allen Zeller signed the Submission Agreement: July 20, 2020.

Statement of Answer filed by Respondent on or about: August 2, 2020.
UBS signed the Submission Agreement: July 21, 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: expungement of Occurrence Number 1561775; compensatory damages in the amount of \$1.00 from Respondent; and any and all other relief

that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested the denial of 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 December 29, 2020, Claimant filed an Attorney Certification confirming that the customer in Occurrence Number 1561775 ("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 17, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

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

The Customer also did not participate in the expungement hearing and Claimant's counsel represented that she spoke with the Customer in advance of the hearing, and that the Customer advised that she did not object to the expungement request. 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 also reviewed the settlement documentation related to Occurrence Number 1561775, considered the amount of payment 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 was not a party to the settlement, and did not nor was he asked to contribute to the settlement amount.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's oral testimony at the hearing; pleadings submitted (Claimant's Statement of Claim and Submission Agreement, Respondent's Answer and Submission Agreement); exhibits submitted in evidence, including, the Customer's account documents for the relevant period, Claimant's CRD Snapshot, the Settlement Agreement, Lehman Brothers' Issuer's Pricing Supplement including disclosure relating to terms and risks, and the Customer's Statement of Claim in the underlying FINRA Arbitration case; and, Claimant's Counsel's proffer and written affirmation concerning a phone conversation with the Customer, initiated by the Customer following her receipt of notice of the hearing, in order to affirmatively state that she approved, without objection, the expungement of her complaint from Claimant's CRD record.

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 all references to Occurrence Number 1561775 from registration records maintained by the CRD for Claimant (CRD Number 2263684) with the understanding that, pursuant to Notice to Members 04-16, Claimant Mark Allen Zeller 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 finding of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

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

The Customer had a moderate risk tolerance, investment objectives of income and capital appreciation, and a portfolio valued at approximately \$1,000,000.00, of which the instrument at issue here represented only 3% of the portfolio's value. The terms and risks of the Lehman Brothers structured bond at issue in this matter were fully explained by Claimant during in-person meetings with the Customer and were also clearly delineated in the accompanying documents. The bond's issuer, Lehman Brothers, was at the time of purchase (February 5, 2008), rated A+/A1/AA-by S&P, Moody's and Fitch, respectively. The global market collapse later in 2008 caused the unprecedented and arguably unpredictable bankruptcy of Lehman Brothers, unanticipated by virtually the entire investment industry - including Claimant, Respondent, and the Customer. Claimant had no notice until after the event of the Customer's FINRA arbitration case (in which Respondent did not appear), was not a named party, was not aware of the settlement agreement, and consequently neither participated in nor contributed to it.

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
--------------------------	-----------

*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

Postponement Fees

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

January 15, 2021, postponement requested by Claimant = WAIVED

Total Postponement Fee = WAIVED

The Arbitrator has waived the entire postponement fee.

Last-Minute Cancellation Fees

Fees apply when a hearing on the merits is cancelled within ten calendar days before the start of a scheduled hearing session:

January 15, 2021, cancellation requested by Claimant = WAIVED

Total Last-Minute Cancellation Fee = WAIVED

The Arbitrator has assessed the entire last-minute cancellation fee.

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: November 16, 2020 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing: February 17, 2021 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

Joan M. Traub

-

Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

Arbitrator's Signature

Joan M. Traub

Joan M. Traub
Sole Public Arbitrator

02/22/2021

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.

February 22, 2021

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