

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Mark Matthew Martiak

Case Number: 20-02348

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

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Mark Matthew Martiak: Thomas McEvoy, Esq., Sichenzia Ross Ference, LLP, New York, New York.

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

CASE INFORMATION

Statement of Claim filed on or about: July 24, 2020.

Mark Matthew Martiak signed the Submission Agreement: July 24, 2020.

Statement of Answer filed by Respondent on or about: September 13, 2020.

UBS Financial Services, Inc. signed the Submission Agreement: August 3, 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 1472510, and compensatory damages in the amount of \$1.00 from Respondent.

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

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 March 8, 2021, Claimant advised that the customer in Occurrence Number 1472510 ("Customer") was served with the Statement of Claim and notice of the date and time of the expungement hearing.

On March 22, 2021, the Customer submitted notice asserting that the Statement of Claim contained several inconsistencies with respect to her, and that she intended to participate in the hearing.

The Arbitrator conducted a recorded hearing by videoconference on April 13, 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 participated in the expungement hearing and opposed 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.

Due to the age of the underlying customer dispute, no settlement documentation could be provided, and thus the Arbitrator did not review any settlement documentation related to Occurrence Number 1472510. On March 12, 2021 and April 8, 2021, Claimant filed submissions detailing his efforts to obtain the settlement documentation, which the Arbitrator determined to be sufficient. The Customer testified that she had not retained the settlement documentation. Claimant testified that the settlement was not conditioned on any party to the settlement not opposing the expungement request and that Claimant did not contribute to the settlement amount. The Arbitrator determined that expungement of these occurrences is warranted, despite being unable to review the settlement documentation.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the documents and exhibits, the evidence, and the absence of any evidence of wrongful actions by Claimant.

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 1472510 from registration records maintained by the CRD for Claimant Mark Matthew Martiak (CRD Number 4607789) with the understanding that, pursuant to Notice to Members 04-16, Claimant Mark Matthew Martiak 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 false.

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

The account subject to the underlying claim was opened by another broker, not by Claimant. The documents Claimant provided from Respondent revealed that authority existed for the investments to be made, and thus the allegations relating to unauthorized investments are false.

Claimant provided testimony and evidence to support his assertion that the allegations were false. Additionally, the documents provided supported the oral evidence from Claimant that the matters set out in the Customer's complaint were false. The Customer appeared at the hearing and gave testimony as well. The Customer's testimony did not refute the findings that the allegations were false. While the settlement documents could not be produced due to the age of the claim, the Arbitrator determined that sufficient efforts were made to obtain the settlement documents. Additionally, the Arbitrator was able to ascertain the terms of the settlement by way of other documents and testimony. The Arbitrator finds that expungement is warranted, despite not having reviewed the settlement documents.

Therefore, the Arbitrator finds that the claims are false, and expungement of Occurrence Number 1472510 is recommended because Rule 2080(b)(1)(C) has been satisfied.

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 that employed the associated person at the time of the event giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge	=\$	150.00
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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 17, 2020	1 session	

One (1) hearing session on expungement request @ \$50.00/session	=\$	50.00
Hearing: April 13, 2021	1 session	

Total Hearing Session Fees	=\$	100.00
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The Arbitrator has assessed \$75.00 of the hearing session fees to Claimant.

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

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

ARBITRATOR

Richard Gee

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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

Richard Gee

Richard Gee
Sole Public Arbitrator

04/15/2021

Signature Date

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April 16, 2021

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