

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Peter Douglas McColgan

Case Number: 20-02437

vs.

Respondent
UBS Financial Services Inc.

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. Member

REPRESENTATION OF PARTIES

For Claimant Peter Douglas McColgan (“Claimant”): Benjamin Winograd, Esq. and Docthor Kennedy, Esq., AdvisorLaw, LLC, Westminster, 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: July 30, 2020.
Claimant signed the Submission Agreement: July 29, 2020.

Statement of Answer filed on or about: September 13, 2020.
Respondent 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 denied any wrongdoing but did not oppose Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Number 2056748, compensatory damages in the amount of \$1.00, and any and all other relief that the Arbitrator

deems just and equitable.

In the Statement of Answer, Respondent opposed Claimant's request for \$1.00 in compensatory damages but did not request any other relief.

At the hearing, Claimant withdrew the request for \$1.00 in compensatory damages.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

On December 7, 2020, Claimant advised that the customer in Occurrence Number 2056748 ("Customer") was served with the Statement of Claim and notice of the date and time of the expungement hearing ("Notice"). On December 15, 2020, Claimant filed an Affidavit confirming that the Customer was served with the Notice. Claimant also filed a copy of the FedEx tracking information available online for the Notice.

The Arbitrator conducted a recorded, telephonic hearing on March 16, 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 noted that Claimant submitted a letter from the Customer, dated March 3, 2021, in support of the request for expungement.

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 2056748, 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 did not contribute to the settlement amount.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's Exhibits 1 and 2 and Claimant's testimony.

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 2056748 from registration records maintained by the CRD for Claimant Peter Douglas McColgan (CRD Number 1783205) with the understanding that, pursuant to Notice to

Members 04-16, Claimant Peter Douglas McColgan 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 registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and

The claim, allegation, or information is false.

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

The Customer’s complaint was related not to unauthorized trading but to a mistake. The record contains a letter from the Customer, in which blame for the failure to reverse a 2018 transaction that resulted in unwanted capital gains taxes is placed not upon Claimant but upon Claimant's former employer, Respondent. Claimant promptly requested that Respondent move the trade at issue to the error account and make the Customer whole. Only in the following year did the Customer learn that this had not occurred and that he suffered unintended tax consequences. Respondent did not follow up on Claimant’s request until the Customer complained, resulting in a settlement. The Customer’s complaint was against Respondent alone, not against Claimant. The Customer continues to have Claimant as his financial advisor.

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

Member Surcharge Fee = \$ 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 @ \$50.00/session | | = \$ | 50.00 |
| Pre-Hearing Conference: November 18, 2020 | 1 session | | |
| One (1) hearing session on expungement request @ \$50.00/session | | = \$ | 50.00 |
| Hearing: March 16, 2021 | 1 session | | |
| <hr/> | | | |
| 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

Stephen P. Calardo

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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

Stephen P. Calardo

Stephen P. Calardo
Sole Public Arbitrator

03/17/2021

Signature Date

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March 17, 2021

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