Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants
Orlando Javier Pérez
Viviana Cristina Pérez Cordero

Case Number: 20-02458

vs.

Respondents
UBS Financial Services, Inc.
UBS Financial Services Incorporated of Puerto Rico

Hearing Site: San Juan, Puerto Rico

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 Persons vs. Members

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

REPRESENTATION OF PARTIES

For Claimants Orlando Javier Pérez ("Claimant 1") and Viviana Cristina Pérez Cordero ("Claimant 2"): Sonia M. López del Valle, Esq. and Roberto C. Quiñones-Rivera, Esq., McConnell Valdés, LLC, San Juan, Puerto Rico.

For Respondents UBS Financial Services, Inc. and UBS Financial Services Incorporated of Puerto Rico ("Respondents"): Rey F. Medina Vélez, Esq., UBS Financial Service Incorporated of Puerto Rico, San Juan, Puerto Rico.

CASE INFORMATION

Statement of Claim filed on or about: July 31, 2020.
Orlando Javier Pérez signed the Submission Agreement: July 27, 2020.
Viviana Cristina Pérez Cordero signed the Submission Agreement: July 27, 2020.

Statement of Answer filed by Respondents on or about: August 13, 2020.
UBS Financial Services, Inc. signed the Submission Agreement: August 3, 2020.
UBS Financial Services Incorporated of Puerto Rico signed the Submission Agreement: August 13, 2020.

CASE SUMMARY

In the Statement of Claim, Claimants asserted a claim seeking expungement of customer dispute information from registration records maintained by the Central Registration Depository ("CRD").

In the Statement of Answer, Respondents supported Claimants' expungement requests.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested: expungement of Occurrence Numbers 1828950 and 1828949 ("Customers A"), 1744456 and 1744452 ("Customers B"), 1847168 and 1847165 ("Customers C"), 1703825 and 1703824 ("Customers D"), 1915294 ("Customers E"), and 1847171 and 1847166 ("Customers F"); and compensatory damages in the amount of $1.00 from Respondents.

In the Statement of Answer, Respondents did not delineate any specific relief request.

At the hearing, Claimants 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 April 19, 2021, Claimants advised that the customers in Occurrence Numbers 1828950, 1828949, 1744456, 1744452, 1847168, 1847165, 1703825, 1703824, 1915294, 1847171, and 1847166 ("Customers") were 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 April 28, 2021, so the parties could present oral argument and evidence on Claimants' requests for expungement.

Respondent participated in the expungement hearing and, as stated in the Statement of Answer, supported the requests for expungement.

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

The Arbitrator reviewed Claimants' BrokerCheck® Reports. 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 documentation related to Occurrence Numbers 1828950, 1828949, 1744456, 1744452, 1847168, 1847165, 1703825, 1703824, 1915294, 1847171, and 1847166, considered the amount of payment made to any party to the settlements, and considered other relevant terms and conditions of the settlements. The Arbitrator noted that the settlements were not conditioned on any party to the settlements not opposing the expungement requests and that Claimants did not contribute to the settlement amounts.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimants' testimonial evidence, Claimants' exhibits A-EE, and Claimants' supplemental exhibits 1-23.

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 Numbers 1828950, 1744456, 1847168, 1703825, 1915294, and 1847171 from registration records maintained by the CRD for Claimant Orlando Javier Pérez (CRD Number 1019547), and the expungement of all references to Occurrence Numbers 1828949, 1744452, 1847165, 1703824, and 1847166 from registration records maintained by the CRD for Claimant Viviana Cristina Pérez Cordero (CRD Number 4116565), with the understanding that, pursuant to Notice to Members 04-16, Claimants Orlando Javier Pérez and Viviana Cristina Pérez Cordero 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 registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

   The claim, allegation, or information is false.

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

   At the outset of the April 28, 2021 final hearing ("Hearing"), Claimants stated that Claimants' only witnesses would be Claimant 1 and Claimant 2. Claimants confirmed that all Customers in the six underlying actions had been provided with the Petition for Expungement ("Petition") and had been notified about the final hearing date and time, including that they would have the right to appear at the Hearing. Claimants confirmed that none of the Customers had elected to participate in the final hearing. Claimants offered into evidence Claimants' Hearing exhibits which included the exhibits attached to the Petition (A-EE) and later-filed Supplemental Exhibits 1-23. The Supplemental Exhibits were posted to the DR Portal on April 19, 2021 and April 21, 2021. Respondents did not object to the admission of all of these Exhibits. Respondents stated that they would not be presenting any witnesses or evidence. Respondents also stated that they did not object to the granting of expungement for the occurrences described in the Petition.

Occurrence Numbers 1828950 and 1828949 (Case Number 15-01853):

This matter corresponds with Occurrence Numbers 1828950 and 1828949 for Claimant 1 and Claimant 2, respectively. Customers A were three individuals, a mother ("Customer A1") and her two adult children ("Customer A2" and "Customer A3"). Customers A brought a claim against Respondents with allegations that Respondents concentrated Customers A's accounts in unsuitable securities, Puerto Rico Closed-End Funds ("CEFs"). Customer A1 became Claimant 1's client in the 1980s when Claimant 1 worked at Merrill Lynch. After Customer A1's husband passed away in the early 1990s, she and her two children, Customer A2 and Customer A3, received a substantial inheritance which they invested with Claimant 1 at Merrill Lynch. Claimant 1 later changed his employment to Santander Securities, and Customers A continued to use Claimant 1 as their financial advisor ("FA") along with Claimant 1's daughter, Claimant 2. From the beginning of their relationship with Claimants, Customers A's investment objective was high-yielding, tax-advantaged products such as CEFs.

Starting in 2003, Customers A opened accounts with Respondents in Puerto Rico through another FA, FA 1, a friend of Customer A2. In 2007, Claimants became affiliated with Respondents. At that time, Customer A1 transferred securities from Santander to Respondents. Customer A2 and Customer A3 opened additional accounts at Respondents with Claimants, individually, jointly, and jointly with Customer A1. Customers A maintained a total of nine accounts at Respondents, four serviced by FA 1 until she left Respondents in 2014. After that, those accounts were serviced by other FAs at Respondents, not by Claimants. In June 2007, Customer A1 placed numerous positions formerly at Santander with Claimants at Respondents and continued to make more investments in subsequent years. Between 2008 and 2010, Claimants recommended that Customer A1 liquidate a significant portion of her CEFs and PR Bank Preferred Shares to purchase AAA-Rated CEFs. Those recommendations worked to Customer A1's advantage by reducing her exposure to PR credit risk, thus avoiding a more detrimental impact from the 2013 PR market collapse. In fact, Customer A1 realized a significant profit from an account with Respondents by the time she closed the account in April 2014. As to the other four accounts Claimants serviced for Customers A, due to the diversity of the investments, Customers A realized a total out-of-pocket profit of a reasonable amount. In contrast, the four accounts FA 1 serviced for Customers A incurred a significant out-of-pocket loss.

Taking all of the above into account, the evidence supports Claimants' position that Customers As' accounts were not unsuitably concentrated in CEFs. The Arbitrator finds that the allegations in Customers As' action were clearly erroneous and false. At no point did Claimants engage in the alleged investment-related sales practice violation. Therefore, the Arbitrator recommends the expungement of Occurrence Numbers 1828950 and 1828949 because Rules 2080(b)(1)(A), (B), and (C) have been satisfied.

Occurrence Numbers 1744456 and 1744452 (Case Number 15-00062):

This matter corresponds with Occurrence Numbers 1744456 and 1744452 for Claimant 1 and Claimant 2, respectively. Customers B were two married individuals ("Customer B1" and "Customer B2"). In their claim against Respondents, Customers B alleged that their accounts were concentrated in unsuitable CEF recommendations that Claimants made. In 1989

Customers B became Claimant 1's clients at Merrill Lynch. For 25 years Customers B stayed with Claimant 1 from Merrill Lynch to Dean Witter, back to Merrill Lynch, then Santander Securities, and lastly, Respondents. When Customers B opened their accounts at Santander with Claimant 1 in the early 2000s, they told him that, because Customer B1 had recently retired, their investment objective was tax-free securities providing higher income than the U.S.-based securities they had up to that point. In 2003, Claimants met with Customers B and discussed alternatives suitable for them, including PR CEFs. Customers B decided to invest in a Santander CEF and thereafter purchased five other CEFs which, in 2007, they transferred with their other investments to Respondents.

Between 2007 and 2012 Customers B maintained a portfolio similar to that which they had maintained at Santander, purchasing four additional CEFs, a PR Bond and bank preferred shares. In 2012, Customers B changed their risk profile from moderate to conservative and their investment objectives from current income and capital appreciation to current income. Claimants advised Customers B to liquidate three of their CEFs and purchase three funds with higher credit quality and less exposure to PR credit risk. In June 2012, Customers B insisted on purchasing another CEF not among Claimants' recommendations. Regardless, in June 2013, Customers B were holding 85% AA or AAA rated investments, and their exposure to PR credit risk was only 26.5%. Due to Claimants' sound and suitable recommendations, Customers B avoided the severe economic impact of the 2013 Puerto Rico market collapse. In January 2015, more than two years after that crash, Customers B had a realized net out-of-pocket profit of a reasonable amount in their portfolio with Respondents.

Claimants maintained that the allegations in this case were clearly erroneous and false, and that at no point did they engage in the alleged investment related sales practice violation. The Arbitrator finds that the testimonial and documentary evidence support Claimants' position. Therefore, the Arbitrator recommends expungement of Occurrence Numbers 1744456 and 1744452 because Rules 2080(b)(1)(A), (B), and (C) have been satisfied.

Occurrence Numbers 1847168 and 1847165 (Case Number 15-02857):

This matter corresponds with Occurrence Numbers 1847168 and 1847165 for Claimant 1 and Claimant 2, respectively. Customers C were two married individuals ("Customer C1" and "Customer C2"). Customer C1 was a retired accountant and auditor for the Puerto Rico Department of Treasury. Along with his wife, Customer C2, Customers C brought a claim against Respondents based upon alleged recommendations to purchase investments which concentrated them in allegedly unsuitable CEFs and PR Bonds. When Claimants changed employment from Santander to Respondents, Customers C followed them. Customers C selected a moderate risk profile and investment objectives of current income and capital appreciation. Customers C transferred five Santander CEFs and two PR Bonds to their new accounts at Respondents. Customers C's primary goal continued to be high and tax-favorable yields. For that reason, Customers C continued purchasing CEFs at Respondents. In fact, between 2007 and 2012, Customers bought seven more CEFs. In mid-2012, Claimants recommended that Customers C sell the PR fixed income funds II and III to purchase AAA-rated CEFs, a strategy to increase the credit quality of their portfolio and decrease exposure to PR credit risk. Customers C agreed to that strategy and corresponding transactions took place in May and July 2012.

In February 2013, Customers C contacted Claimants about their concern relating to negative reports published about PR Bonds. Claimants recommended that Customers C liquidate at least part of their PR securities to purchase US bonds. However, Customers C ultimately rejected that recommendation because US bonds provided lower yields. Additionally, Customers C were reluctant to realize losses on their PR positions. After the 2013 market collapse, Claimants discussed with Customers C the possibility of taking advantage of Respondents' repurchase program whereby they could sell their CEFs to Respondents. Customers C repeatedly refused this offer because they were hoping for a market recovery and did not want to realize their losses nor reduce the income they still were receiving from those investments. See Exhibit O, p.2 (CRM Note of July 23, 2014). Because Claimants provided sound and suitable recommendations to Customers C (e.g. buying AAA-rated funds in mid-2012), Customers C did not suffer a more unfavorable impact from the 2013 crash. This is evidenced by Exhibit N, p.1, that in November 2015, more than two years after the crash, Customers C's account was net profitable. Any trading losses Customers C suffered were due to their own informed and independent decisions to hold their investments. In fact, they continued to maintain accounts with Claimants at Respondents even after these events.

The allegations in Customers C's action were clearly erroneous and false because at no point did Claimants engaged in the alleged investment-related sales practice violation. Therefore, the Arbitrator recommends expungement of Occurrence Numbers 1847168 and 1847165 because Rules 2080(b)(1)(A), (B), and (C) have been satisfied.

Occurrence Numbers 1703825 and 1703824 (Case Number 14-01012):

This matter corresponds with Occurrence Numbers 1703825 and 1703824 for Claimant 1 and Claimant 2, respectively. Customers D were two married individuals ("Customer D1" and "Customer D2"), as well as a third individual ("Customer D3"). Customers D filed a claim against Respondents alleging that Respondents recommended concentrating Customers Ds' portfolios in CEFs and PR Bonds unsuitable for their investment objectives. Customer D3 did not utilize Claimants services but rather had his own FA. Customer D1 was a businesswoman and an experienced investor who was the main decision maker for Customer D1 and Customer D2. In Customer D1's opening account documents back in 2008, she stated that she had more than twenty years of investment experience. She chose her primary risk profile as "aggressive/speculative." Her investment objective was "capital appreciation." See Exhibit P. Several members of Customer D1's family worked as FAs, including the individual who was her original FA at Respondents. See Exhibit Q. In March 2010, Claimant 1 began servicing Customer D1's and Customer D2's accounts after their former FA, another relative of Customer D1, left Respondents. Claimant 2 never met with nor made any investment recommendations to either Customer D1 or Customer D2 while they were customers of Respondents.

Customer D1 and Customer D2 opened six more accounts at Respondents while Claimant 1 was their FA between March 2012 and November 2013. Four of those additional accounts were IRAs and two were brokerage accounts. Customer D1 and Customer D2 wanted tax-exempt income with asset and geographic diversification. Accordingly, Claimant 1 recommended a range of products. A review of Customer D1's and Customer D2's portfolio contradicts their allegations they were unsuitably concentrated in CEFs and PR Bonds. Rather, the documentary evidence showed a large percentage of their underlying holdings of CEFs were non-PR paper as of June 2013. Among this evidence were many emails between

Customer D1 and Claimant 1. These communications clearly demonstrate that Customer D1 was a sophisticated investor who actively monitored, managed, and made well-informed, independent decisions relating to Customer D1's and Customer D2's account. After the 2013 PR bond market collapse, Claimant 1 notified Customer D1 about Respondents' repurchase program for her CEFs. Claimant 1 advised Customer D1 about this opportunity more than once. Yet, Customer D1 did not want to take advantage of the repurchase program because she did not want to sacrifice the ongoing income that Customer D1 and Customer D2 received from those investments. Customer D1's and Customer D2's trading losses resulted in large part due to Customer D1's decision to hold the CEFs after the expiration of the repurchase period.

As to Claimant 2, the allegations in this case were factually impossible because Claimant 2 never interacted with Customers D for recommendations. As to both Claimants, the allegations in this case were clearly erroneous and false, and they did not engage in any of the alleged investment-related sales practice violations. Therefore, the Arbitrator recommends expungement of Occurrence Numbers 1703825 and 1703824 because Rules 2080(b)(1)(A), (B), and (C) have been satisfied.

Occurrence Number 1915294 (Case Number 16-03522):

This matter corresponds with Occurrence Number 1915294 for Claimant 1. Customer 2 does not seek expungement of this matter because she was not an FA to Customers E, and thus the case was not reported on her CRD Record. Customers E were two siblings ("Customer E1" and "Customer E2"). Customers E filed a claim against Respondents alleging unsuitable recommendations due to the concentration of their portfolios in CEFs. The underlying action alleged that FA 2, not Claimants, was the FA who took care of Customer E1's account during the relevant period of his claim. FA 2 was the FA for Customer E2 from April 2004 to December 2008, and FA 3 was her FA from January 2009 to August 2011. Claimant 1 became the FA for Customer E2 starting in September 2011 through the closing of the accounts.

By the time Claimant 1 began servicing Customer E2's accounts, Customer E2 already had bought PR CEFs, PR Bonds, and PR Bank preferred stock at Respondents. When Customer E2 made those purchases, they were completely suitable for her because she had moderate risk tolerance and wanted high levels of tax-advantaged income from her investments. Regardless, Claimant 1's recommendations in mid to late 2012 to Customer E2 were designed to decrease her exposure to PR credit risk and to increase the credit quality of her portfolio by switching to AAA-rated CEFs. Because Claimant 1 made sound and suitable recommendations, Customers E avoided a more significant negative impact following the 2013 market collapse.

In light of the above, the Arbitrator finds the allegations in this case were clearly erroneous and false, and that Claimant 1 never engaged in the alleged investment-related sales practice violation. Therefore, the Arbitrator recommends expungement of Occurrence Number 1915294 because Rules 2080(b)(1)(A), (B), and (C) have been satisfied.

Occurrence Numbers 1847171 and 1847166 (Case Number 15-02642):

This matter corresponds with Occurrence Numbers 1847171 and 1847166 for Claimant 1 and Claimant 2, respectively. Customers F were two unrelated individuals ("Customer F1" and "Customer F2"). Customers F filed a claim against Respondents alleging unsuitable recommendations resulting in the concentration of their portfolios in CEFs and PR Bonds. However, Customers F's Statement of Claim alleged that FA 4, not Claimants, was the FA for Customer F2's accounts during the relevant period alleged in that underlying action. Other FAs serviced Customer F1's accounts until Claimants took over from November 2008 to the present.

When Customer F1 opened his account, he invested a moderate sum in a CEF. Thus, the sole transaction at issue was recommended, not by Claimants, but by another FA. Later, when Claimants became Customer F1's FAs of record, Claimants discussed with Customer F1 the status of his account and investment alternatives. However, Customer F1 did not wish to make any changes to his portfolio and stated that he was fine with his CEF because it had a high yield and was tax-exempt. During the period at issue in this case, Customer F1's account activity was limited to monthly dividend withdrawals which the CEF provided along with minor sales of the investment to fund his cash requirements. Customer F1 became concerned during September-October 2013 when his CEF decreased in value. However, he repeatedly declined to liquidate that investment even after Claimants raised the issue of risk involved in his holding onto that investment. Claimants ensured that Customer F1 knew about Respondents' repurchase program which Customer F1 rejected.

In sum, Claimants did not recommend the investment at issue in this case, Customer F1 was satisfied with his CEF investment, and it was solely Customer F1's decision to continue holding that CEF beyond the repurchase window. The Arbitrator notes that, as of December 2015, more than two years after the PR bond market collapse, Customer F1's account showed a net profit. The undersigned concludes that the allegations in this case were clearly erroneous and false. Claimants did not engage in the alleged investment-related sales practice violation. Therefore, the Arbitrator recommends expungement of Occurrence Numbers 1847171 and 1847166 because Rules 2080(b)(1)(A), (B), and (C) have been satisfied.

Conclusion:

As to each of the six underlying actions, the Arbitrator recommends expungement of all references to Occurrence Numbers 1828950, 1828949, 1744456, 1744452, 1847168, 1847165, 1703825, 1703824, 1915294, 1847171, and 1847166 from Claimants' CRD Records, pursuant to Rules 2080(b)(1)(A), (B), and (C). At the close of the Hearing, Respondents stated that by agreement, Respondents will pay all hearing fees.

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 parties, Respondents are each assessed the following:

Member Surcharge	=$	150.00

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

March 17, 2021, postponement requested by Parties	=$	50.00
Total Postponement Fees	=$	50.00

The Arbitrator has assessed $25.00 of the postponement fees jointly and severally to Claimants.

The Arbitrator has assessed $25.00 of the postponement fees jointly and severally to Respondents.

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:

March 17, 2021, cancellation requested by Parties	=$	WAIVED
Total Last-Minute Cancellation Fees	=$	WAIVED

The Arbitrator has waived the total last-minute cancellation fees.

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) hearing session on expungement request @ $50.00/session	=$	50.00
Hearing: April 28, 2021 1 session		
Total Hearing Session Fees	=$	50.00

The Arbitrator has assessed the total hearing session fees jointly and severally to Respondents, per the Parties' agreement.

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

ARBITRATOR

Martin A. Feigenbaum - 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

Martin A. Feigenbaum **05/07/2021**

Martin A. Feigenbaum
Sole Public Arbitrator

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.

May 07, 2021
Date of Service (For FINRA Dispute Resolution Services use only)