

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Timothy Burr Davis

Case Number: 20-02477

vs.

Respondent
UBS Financial Services, Inc.

Hearing Site: Boston, Massachusetts

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 Timothy Burr Davis: Stephan Louviere, Esq., Louviere Law Firm, P.A., Pompano Beach, Florida.

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: August 3, 2020.

Timothy Burr Davis signed the Submission Agreement: August 3, 2020.

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

UBS signed the Submission Agreement: August 4, 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 took no position on Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Number 1433392; 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 January 28, 2021, Claimant advised that the customer in Occurrence Number 1433392 ("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. 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 noted that the dispute related to Occurrence Number 1433392 was not settled and, therefore, there was no settlement document to review. Respondent UBS conducted an investigation of the underlying customer dispute and found no wrongdoing by Claimant. Respondent UBS notified the Customer of this finding in a letter dated May 8, 2009. The Customer took no further action with regard to this matter.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's testimony at the hearing, and Claimant's exhibits A-G as submitted into evidence at the hearing, including, but not limited to, proofs of service upon the Customer, the Customer's complaint email, and Respondent's response thereof, FINRA Rule 2080 and Notice to Members 04-16.

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 1433392 from registration records maintained by the CRD for Claimant Timothy Burr Davis (CRD Number 3141863) with the understanding that, pursuant to Notice to Members 04-16,

Claimant 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:

In the underlying customer complaint, as specified in Claimant’s BrokerCheck® Report, the Customer alleged that in November 2008, he gave Claimant instructions to sell \$400,000.00 of his portfolio, but that instead an order for \$300,000.00 was entered, resulting in damages in excess of \$5,000.00.

I find that the claim or allegation against Claimant is false within the meaning of FINRA Rule 2080(b)(1)(C). After considering all the evidence – including Claimant’s testimony at the hearing, the evidence of the actions taken by the Customer and Claimant in November 2008, and the subsequent investigation by Respondent UBS – I find no evidence that the Customer requested Claimant to sell \$400,000.00 of his portfolio. Rather, the evidence shows that the request was to sell \$300,000.00.

More specifically, I find that the events that occurred contemporaneously with the period covered by the allegation demonstrated that the Customer’s request was to sell \$300,000.00. Immediately after finishing his call with the Customer to discuss the amount to sell, Claimant emailed his assistant and directed the sale of \$300,000.00. This was when the discussion was fresh in his mind and when he would have no reason to sell an amount other than what the Customer requested. Further, when the Customer subsequently called and said he had requested sale of \$400,000.00, Claimant explained that had not been the case, but nevertheless offered to make a trade correction in the Customer’s favor, which the Customer declined.

When Respondent UBS investigated the Customer’s allegations, within six months of the occurrence, its review corroborated Claimant’s version of events, which was that the Customer requested the sale of \$300,000.00 of his portfolio, not \$400,000.00. There is no evidence of any kind on the record that would support or corroborate the Customer’s allegations.

For these reasons, I recommend that the claim or allegation be expunged under FINRA Rule 2080(b)(1)(C).

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

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:

Two (2) pre-hearing sessions with a single Arbitrator @ \$50.00/session	=\$ 100.00
Pre-Hearing Conferences: November 18, 2020	1 session
December 4, 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	=\$ 150.00
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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

Robert J. Ambrogi

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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

Robert J. Ambrogi

Robert J. Ambrogi
Sole Public Arbitrator

02/24/2021

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 24, 2021

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