

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
John Thomas Petika

Case Number: 20-02639

vs.

Respondent
UBS Financial Services Inc.

Hearing Site: Tampa, Florida

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 John Thomas Petika (“Claimant”): Harris Freedman, Esq., HLBS Law, 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: August 18, 2020.
Claimant signed the Submission Agreement: August 17, 2020.

Statement of Answer filed on or about: September 13, 2020.
Respondent signed the Submission Agreement: August 24, 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 Numbers 1481297 and 1491929, 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.

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 March 25, 2021, Claimant advised that the one of the customers in Occurrence Numbers 1481297 and the customer in 1491929 (collectively, "Customers") were served with the Statement of Claim and notice of the date and time of the expungement hearing ("Notices"). Claimant also filed a Death Record and obituary for the other customer in Occurrence Number 1481297. On March 30, 2021, Claimant filed an Affidavit confirming that the Customers were served with the Notices. Claimant also filed a copy of the FedEx tracking information available for the Notices.

The Arbitrator conducted a recorded, telephonic hearing on June 15, 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 Customers also did not participate in the expungement hearing. The Arbitrator found that the Customers 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 occurrences in the CRD.

The Arbitrator also reviewed the settlement documentation related to Occurrence Number 1491929, 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.

The Arbitrator noted that the dispute related to Occurrence Number 1481297 was not settled and, therefore, there was no settlement documentation to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's testimony and BrokerCheck® Report, Statement of Claim, Statement of Answer, and Exhibits 1 thru 12.

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 1481297 and 1491929 from registration records maintained by the CRD for Claimant John Thomas Petika (CRD Number 1890972) with the understanding that, pursuant to Notice to Members 04-16, Claimant John Thomas Petika 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.

Occurrence Number 1481297

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:

Per Claimant’s testimony and documents, the customers’ financial advisor died in February 2008. His assistant became their new advisor. There was a mutual compatibility issue which resulted in Claimant, the office manager, taking over the account in November 2008, until the customers left Respondent for another firm in February 2009.

Before February 2008, the customers’ accounts supported their withdrawals for spending cash. However, after that date, the customers did not want to hear that the market dynamics had changed and the accounts could no longer support that level of spending. If the customers’ monthly withdrawals were added back into the account balances, the customers actually made money during that time period. Respondent denied the claim, and no further action was taken.

Occurrence Number 1491929

Pursuant to Rule 13805 of the 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, who taught economics at a local college, was Claimant’s longtime client. After Claimant was promoted to be an office manager in February 2008, he distributed his existing accounts to other advisors. When the market started to drop in August/September of 2008, the customer brought and bought an exchange-traded fund (“ETF”) which, by design, moved in the opposite direction of the market. The security did very well, until the market reversed in March of 2009 and the price of the security collapsed. The decline in value of the customer’s ETF triggered the customer’s complaint. The ETF was not in the UBS catalog, and neither Claimant nor the customer’s advisor recommended the ETF. UBS facilitated the unsolicited investment to please the

customer, although the preferred strategy was to buy blue chip equities and hold the position through rough periods in the market. Respondent settled the claim in order to avoid the cost of litigation.

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:

One (1) pre-hearing session @ \$50.00/session = \$ 50.00
Pre-Hearing Conference: January 15, 2021 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing: June 15, 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

Martin M. Van Luven

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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

Martin M. Van Luven

Martin M. Van Luven
Sole Public Arbitrator

06/22/2021

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.

June 22, 2021

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