

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
John Andrew Randolph

Case Number: 20-02840

vs.

Respondent
UBS Financial Services Inc.

Hearing Site: Minneapolis, Minnesota

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 Andrew Randolph (“Claimant”): Harris Freedman, 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: August 28, 2020.
Claimant signed the Submission Agreement: August 27, 2020.

Statement of Answer filed on or about: September 13, 2020.
Respondent signed the Submission Agreement: August 31, 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 Numbers 1941122 and 1994400, 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 requested that Claimant's request for \$1.00 in compensatory damages be denied.

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 11, 2021, Claimant advised that the customers in Occurrence Number 1941122 ("DG") and Occurrence Number 1994400 ("JL") (collectively, "Customers") were served with the notice of the date and time of the first scheduled expungement hearing ("1st Notices"). On March 15, 2021, Claimant filed an Affidavit confirming that the Customers were served with the 1st Notices. Claimant also filed a copy of the FedEx tracking information available online for the 1st Notices.

On May 28, 2021, Claimant advised that the Customers and JL's sons were served with notice of the date and time of the rescheduled expungement hearing ("2nd Notices"). On June 1, 2021, Claimant filed an Affidavit confirming that the Customers and JL's sons were served with the 2nd Notices. Claimant also filed a copy of the FedEx tracking information available online for the 2nd Notices.

On June 8, 2021 and June 11, 2021, Claimant advised that one of JL's sons was served again at two addresses with notice of the date and time of the rescheduled expungement hearing ("Additional Notices"). On June 14, 2021, Claimant filed an Affidavit confirming that JL's son was served with the Additional Notices. Claimant also filed a copy of the FedEx tracking information available online for the Additional Notices.

On July 16, 2021, FINRA Dispute Resolution Services advised the parties and the Arbitrator that the Director of FINRA Dispute Resolution Services determined that Claimant's request for expungement of occurrence number 1994400 is not eligible for arbitration because the subject of Occurrence Number 1994400 is pending in a newly-filed arbitration. Accordingly, pursuant to Rule 13203(a) of the Code of Arbitration Procedure ("Code"), the forum was denied as to Occurrence Number 1994400.

On July 19, 2021, DG submitted a letter opposing Claimant's expungement request.

The Arbitrator conducted a recorded, telephonic hearing on July 20, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Neither Respondent nor DG participated in the first expungement hearing. During the hearing, the Arbitrator granted Claimant's request for a second hearing to allow Claimant to address DG's letter.

On July 22, 2021, Claimant advised that DG was served with notice of the date and time of the second expungement hearing ("3rd Notice"). On July 26, 2021, Claimant filed an Affidavit

confirming that DG was served with the 3rd Notice. Claimant also filed a copy of the FedEx tracking information available online for the Notice.

On August 24, 2021, Claimant advised that DG was served with notice of the date and time of the rescheduled second expungement hearing ("4th Notice"). On August 30, 2021, Claimant filed an Affidavit confirming that DG was served with the 4th Notice. Claimant also filed a copy of the FedEx tracking information available online for the 4th Notice.

On September 16, 2021, DG filed a letter supplementing his July 19, 2021 letter opposing Claimant's expungement request.

The Arbitrator conducted a second recorded, telephonic hearing on September 20, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent did not participate in the second expungement hearing.

DG participated in the second expungement hearing and opposed the expungement request.

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 1941122 was not settled and, therefore, there was no settlement documentation to review.

In recommending expungement of Occurrence Number 1941122, the Arbitrator relied upon the following documentary or other evidence: Claimant's testimony, DG's testimony, and Claimant's Exhibits 8 and 9.

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 1941122 from registration records maintained by the CRD for Claimant John Andrew Randolph (CRD Number 4439148) with the understanding that, pursuant to Notice to Members 04-16, Claimant John Andrew Randolph 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, 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:

DG blamed Claimant for failing to notify him of the regulatory approval that would trigger the need to timely transfer securities to a charity, thus enabling a tax deduction. Claimant testified that he was not a tax advisor and Respondent did not provide any advice about regulatory approval, thus he was unable to provide such advice to DG. Relying on Claimant for such important information was not appropriate. DG, a lawyer himself, should have sought tax advice from a tax attorney or accountant. Moreover, I find credible Claimant's testimony that he advised DG to obtain a tax expert. DG is incorrect in concluding that Claimant's recommendation to consult with a tax expert constituted tax advice. Further, I note that the complaint was dropped by DG, even though he was offered a small settlement.

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(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
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Postponement Fees

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

April 19, 2021, postponement requested by Claimant	= \$	50.00
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Total Postponement Fees	= \$	50.00
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The Arbitrator has the total postponement fees to Claimant.

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: December 21, 2020	1 session		
Two (2) hearing sessions on expungement request @ \$50.00/session		= \$	100.00
Hearings: July 20, 2021	1 session		
September 20, 2021	1 session		
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Total Hearing Session Fees		= \$	150.00

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

Philip J. Glick

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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

/s Philip J. Glick

October 6, 2021

Philip J. Glick
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.

October 6, 2021.

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