

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Daniel Keith Avan

Case Number: 20-02928

vs.

Respondent
UBS Financial Services Inc.

Hearing Site: Los Angeles, California

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

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

REPRESENTATION OF PARTIES

For Claimant Daniel Keith Avan (“Claimant”): Tosh D. Grebenik, JD, Judex Law, LLC, Broomfield, Colorado.

For Respondent UBS Financial Services Inc. (“Respondent”): John Murphy, Esq., John Murphy & Associates, P.C., New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: September 1, 2020.
Claimant signed the Submission Agreement: August 18, 2020.

Statement of Answer filed by Respondent on or about: October 12, 2020
Respondent signed the Submission Agreement: September 15, 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:

1. Expungement of Occurrence Number 1065282 from Claimant's CRD records, pursuant to a finding that:
 - a. the claim, allegation, or information is factually impossible and clearly erroneous pursuant to FINRA Rule 2080(b)(1)(A); and
 - b. the claim, allegation, or information is false, pursuant to FINRA Rule 2080(b)(1)(C); and
2. Compensatory damages in the amount of \$1.00 from Respondent.

In the Statement of Answer, Respondent requested:

1. Claimant's request for \$1.00 in compensatory damages be denied; and
2. All costs and fees associated with the claim be assessed solely against Claimant.

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 March 3, 2021, Claimant advised that the executor ("Executor") of customer in Occurrence Number 1065282 ("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 July 19, 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 Arbitrator found that the Executor had adequate and reasonable notice of the Statement of Claim and expungement hearing and chose not to participate.

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 was unable to review the settlement documentation related to Occurrence Number 1065282 because Respondent did not provide a copy of the settlement agreement. Based on Claimant's testimony, the Arbitrator noted that Claimant never received a copy of the settlement agreement as he did not participate in the settlement. Having reviewed Claimant's BrokerCheck® Report and heard testimony at the hearing concerning Occurrence Number 1065282, the Arbitrator considered the amount of payment made in the settlement and that Claimant did not contribute to the settlement amount. The Arbitrator also noted that the date of the settlement preceded the effective date of the rule against conditioned settlements.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's testimony; pleadings; and exhibits.

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:

The Arbitrator recommends the expungement of all references to Occurrence Number 1065282 from registration records maintained by the CRD for Claimant Daniel Keith Avan (CRD Number 2352641) with the understanding that, pursuant to Notice to Members 04-16, Claimant Daniel Keith Avan 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 registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

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

Claimant was the Customer’s broker from inception of the non-discretionary account in 1997 to August of 2000 and did not receive any complaints about the investments held. In September of 2000, Claimant moved to a different firm. Credible evidence was presented at the hearing to find that Claimant was not the Customer’s broker during the year and a half prior to the complaint being made. Claimant had no access or knowledge of any transactions between the Customer and Respondent and, therefore, could not have been involved in any sales practice violations alleged in the complaint.

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 that employed the associated person 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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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 with a single Arbitrator @ \$50.00/session	= \$	50.00
Pre-Hearing Conference: December 29, 2020 1 session		
One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing: July 19, 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

Mary M. O'Neil

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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

Mary M. O'Neil

Mary M. O'Neil
Sole Public Arbitrator

07/29/2021

Signature Date

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July 30, 2021

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