

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Lawrence Charles Cane

Case Number: 20-02981

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

REPRESENTATION OF PARTIES

For Claimant Lawrence Charles Cane (“Claimant”): Frances Menzer, Esq., HLBS Law, Westminster, 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 3, 2020.
Claimant signed the Submission Agreement: September 3, 2020.

Statement of Answer filed by Respondent on or about: October 12, 2020.
Respondent signed the Submission Agreement: September 16, 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 Numbers 1446838, 1469602, and 1485339 from Claimant’s

CRD records pursuant to FINRA Rule 2080, as:

- a. the claim, allegation, or information is factually impossible or clearly erroneous; and/or
 - b. Claimant was not involved in the alleged investment-related sales practice violation, forgery, theft misappropriation, or conversion of funds; and/or
 - c. the claim, allegation, or information is false;
2. Compensatory damages in the amount of \$1.00 from Respondent; and
 3. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested:

1. Denial of Claimant's request for \$1.00 in damages; 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 February 15, 2021, Claimant filed an Affidavit confirming that the customer in Occurrence Number 1446838 ("Mr. B") and the customer in Occurrence Number 1469602 (Mr. R on behalf of BB Productions) ("Mr. R") were served with the Statement of Claim and notice of the date and time of the expungement hearing. The Affidavit also noted that Claimant was unable to serve the Statement of Claim and notice of expungement hearing to the customer in Occurrence Number 1485339 ("Ms. I") as she was deceased and provided her death record.

Hereinafter, Mr. B and Mr. R are correctively referred to as the "Customers".

The Arbitrator conducted a recorded, telephonic hearing on March 16, 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 Numbers 1446838 and 1469602, 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 request and that Claimant did not contribute to the settlement amounts. The arbitrator noted that Respondent settled with the Customers in Occurrence Numbers 1446838 and 1469602 by repurchasing the Auction Rate Securities ("ARS").

The Arbitrator noted that the dispute related to Occurrence Number 1485339 was not settled and, therefore, there was no settlement document to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's BrokerCheck® Report; Claimant's testimony; Claimant's arbitration brief; and all exhibits.

AWARD

After considering the pleadings, the testimony and evidence presented at the expungement hearing, 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 1446838, 1469602, 1485339 from registration records maintained by the CRD for Claimant Lawrence Charles Cane (CRD Number 1487211) with the understanding that, pursuant to Notice to Members 04-16, Claimant Lawrence Charles Cane 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 claim, allegation, or information is false.

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

Occurrence Number 1446838 (in which Mr. B was the customer)

Claimant recommended that Mr. B consider purchasing a certain ARS which was AAA rated in an attempt to appreciate the value of his portfolio while meeting his investment objectives. Mr. B told Claimant that he had no need to access those funds, as he owned a sizeable investment portfolio with another firm, and he simply wanted to invest the funds. Claimant explained to Mr. B in detail the terms, risks, costs, fees, advantages, and disadvantages of the ARS, including the risk of illiquidity, and provided Mr. B with the ARS marketing brochure. Between approximately 2005 and 2006, Claimant spoke with Mr. B regularly regarding the performance of his portfolio. In or around 2006, Mr. B transferred his ARS to his investment portfolio that was held away from Respondent. As of that time, Mr. B was no longer a client of Claimant.

Beginning February 7, 2008, auctions for ARS began to fail when investors declined to bid on the securities. The auction failures led to industry-wide freezing of investors' accounts and the failed auctions rendered ARS illiquid. On February 10, 2009, Mr. B lodged a complaint that arose from the unprecedented market events that caused the

breakdown of illiquidity in the market for auction rate. The allegations were published to Claimant's CRD records and BrokerCheck records in 2008 as follows: "Client alleges that his financial advisor misrepresented his investment in the Eaton Vance auction rate security and that it 'operated like a CD and that the only downside was that he would have to wait as much as seven days to get his cash out.'"

As a result, Respondent reported the complaint on Claimant's CRD records. Claimant testified that Mr. B's claim was not based on any finding of fault or wrongdoing by Claimant. Claimant was employed by Respondent in 2008 and ceased to be Mr. B's financial advisor at such time. Claimant, as a financial advisor, is not a guarantor of performance of the market particularly when there is no longer a relationship with the customer.

Occurrence Number 1469602 (in which Mr. R on behalf of BB Productions was the customer)

Claimant recommended that Mr. R of BB Productions consider purchasing a certain ARS which was AAA rated in an attempt to appreciate the value of his portfolio while meeting his investment objectives. Claimant explained to Mr. R in detail the terms, risks, costs, fees, advantages, and disadvantages of Mr. R's ARS, including the risk of illiquidity, and provided Mr. R with the ARS marketing brochure.

In 1998, Mr. R purchased the ARS on behalf of his company. Between approximately 1998 and 2006, Claimant spoke regularly with Mr. R regarding the performance of his portfolio. Mr. R did not express to Claimant any dissatisfaction with the ARS. In or around 2006, Mr. R transferred his portfolio away from Claimant and thus, was no longer a client of Claimant.

Beginning February 7, 2008, auctions for ARS began to fail when investors declined to bid on the securities. The auction failures led to industry-wide freezing of investors' accounts and the failed auctions rendered ARS illiquid. On March 5, 2008, Mr. R brought a complaint against Claimant that "arose out of the sale of an [ARS] that was made prior to the widespread illiquidity in the ARS market that occurred in February 2008." As a result, Respondent reported the complaint on Claimant's CRD records. Claimant testified that Mr. R's claim was not based on any finding of fault or wrongdoing by Claimant. Claimant was employed by Respondent in 2008 and ceased to be Mr. R's financial advisor at such time. Claimant, as a financial advisor, is not a guarantor of performance of the market particularly when there no longer is a relationship with the customer.

Occurrence Number 1485339 (in which Ms. I was the customer)

Claimant recommended that Ms. I consider opening a separately managed account ("SMA"), for the purpose of purchasing a municipal bond fund. Claimant explained to Ms. I in detail the terms, risks, fees, advantages, and disadvantages of the SMA. Claimant also explained to Ms. I that purchasing a municipal bond fund in the SMA would allow her to benefit from the rights of accumulation, improve Mr. I's after-tax yield, and reduce her investment expenses by approximately 50%. Claimant did not purchase any investments or make any transactions on Ms. I's behalf.

On October 8, 2008, Claimant called Ms. I to confirm her request to liquidate the CA Fund. Claimant informed Ms. I that, in several days, the funds would be available to purchase a better municipal bond fund. Ms. I authorized the liquidation of the CA Fund. On October 9, 2008, Ms. I called Claimant and directed him to cancel the transaction. Ms. I told Claimant that, due to the recent market volatility, she no longer wanted to participate in the SMA. As of that time, Ms. I was no longer a client of Claimant. Ms. I had purchased no investments through Claimant. On October 22, 2009, Ms. I alleged that on or about October 8, 2008 to October 9, 2008, Claimant sold her entire mutual funds to purchase another mutual fund when there was no legitimate investment purpose underlying the switch. Ms. I further alleged that her financial advisor failed to disclose that making this switch would result in an almost half a million-dollar loss.

As a result, Respondent reported the complaint on Claimant's CRD records. Claimant testified that Ms. I's claim was not based on any finding of fault or wrongdoing by Claimant. Claimant was employed by Respondent in 2008 and ceased to be Ms. I's financial advisor at such time. Claimant, as a financial advisor, is not a guarantor of performance of the market particularly when there no longer is a relationship with the customer. Furthermore, the allegation of unsuitability is erroneous and false, because Ms. I purchased no investments through Claimant.

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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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 22, 2020	1 session	

One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing: March 16, 2021 1 session		
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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

Natalie Panossian-Bassler

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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

Natalie Panossian-Bassler

Natalie Panossian-Bassler
Sole Public Arbitrator

04/20/2021

Signature Date

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April 20, 2021

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