

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimant

Vincent John Fiorentino

Case Number: 20-03189

vs.

Respondent

UBS Financial Services Inc.

Hearing Site: New York, New York

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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

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimant Vincent John Fiorentino: Kevin D. Galbraith, Esq., The Galbraith Law Firm LLC, New York, New York.

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

**CASE INFORMATION**

Statement of Claim filed on or about: September 11, 2020.

Vincent John Fiorentino signed the Submission Agreement: September 11, 2020.

Statement of Answer filed by Respondent on or about: October 12, 2020.

UBS Financial Services Inc. 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: expungement of Occurrence Number 2064770; 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 objected to Claimant's request for \$1.00 in damages and requested that all costs and fees associated with the Claim be assessed solely against Claimant.

## **OTHER ISSUES CONSIDERED AND DECIDED**

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

On August 21, 2021, Claimant advised that the customer in Occurrence Number 2064770 was served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted recorded hearings by videoconference on October 26, 2021, October 29, 2021, November 4, 2021, November 8, 2021, November 9, 2021, November 22, 2021, December 17, 2021, and December 21, 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 participated in the 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 also reviewed the settlement documentation related to Occurrence Number 2064770, 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.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the pleadings, Claimant's exhibits, the customer's exhibits, Claimant's testimony, the customer's testimony, Claimant's BrokerCheck® Report, and the settlement agreement.

## **ARBITRATOR'S REPORT**

### **HISTORY OF THIS CONTROVERSY**

Respondent duly filed an entry on Claimant's Form U5 in response to a complaint from his customer that Claimant, her former financial advisor at Respondent, had not previously disclosed the fees that were charged (1) to her personally and (2) to her as guardian of her minor children's accounts. In 2020, Respondent settled with customer for virtually all of her

claim, and the agreement provided for a typical universal release in favor of Respondent. At the time of the settlement, Claimant had recently moved to Wells Fargo, and Respondent neither included him in the settlement negotiations, nor did it seek his financial contribution. In 2020, the customer met with Claimant at Wells Fargo where she effectively repeated her claims against him, which he denied.

In 2021, Claimant brought this expungement proceeding. A review of Claimant's BrokerCheck Report did not reveal any additional disclosures or expungement requests. Respondent, in its Answer in this proceeding, took issue with a certain allegation in Claimant's Statement of Claim, but it did not oppose his expungement request, nor did it participate as a party to the proceeding following its Answer, except (i) to produce documents to the customer pursuant to the Arbitrator's order and (ii) to attend one hearing to reiterate its compliance with that production order. The customer participated vigorously in the proceeding, including calling her own witnesses, submitting numerous exhibits, giving an hour-plus long closing statement, and submitting a twenty-five page, single-spaced post-hearing brief. She alleged not only that Claimant had not disclosed fees, but also that he had manufactured documents, caused her to sign documents under false pretenses, and had no authority to trade in her account. The expungement request was based on the report of allegedly undisclosed fees, and the hearing was limited to that issue. Claimant's discovery in this proceeding, with the exceptions of (i) his notes of the January 2020 meeting with the customer and her friend and (ii) his Form U5, consisted entirely of documents provided by Respondent UBS.

#### THE HEARING: SUMMARY OF MOTIONS AND RELEVANT TESTIMONY

Prior to and during the hearing, the customer moved for production of all discovery from Respondent to Claimant. The motion was granted as to all the exhibits Claimant entered, and denied as to discovery which was not put into evidence. During the hearing, Claimant's counsel objected to the customer receiving a recording of the proceedings, and this motion was denied. During the hearing, the customer moved for discovery from Respondent as to all her opening account documents, and that motion was granted. The customer also moved for additional discovery following the production of documents from Respondent, and that motion was denied. The customer separately sought FINRA to make Respondent amend its Form U5 filing, but that was not a part of this proceeding. As noted, the single issue in this proceeding was whether the customer was made aware of the fee charged for advice and maintenance of her account, that is, the gravamen of complaint on Claimant's BrokerCheck Report. The relevant portions of testimony were these:

(I) Claimant's testimony presented in his direct case and as a witness called by the customer Claimant testified in sum that he informed the customer of the fee at the outset of her account opening and that she was aware of the fee. He testified that (a) he relied on a number of Respondent-produced exhibits, including monthly account reports, which specifically stated the fee and (b) most of the documents accompanying the customer's advisory agreement were generated not by him personally but by Respondent. As mentioned, Respondent UBS did not appear, and it did not contest its own documents. He also submitted notes of the 2020 meeting which he testified he prepared a few hours after the meeting.

(II) The customer's testimony presented as a witness for Claimant and as a witness for herself The customer testified that she met with Claimant at UBS in 2018 and after he had moved to Wells Fargo in 2020. She first testified that she never signed any agreement with fees stated

and that she never saw the monthly account statements that stated the fees charged because either (A) if the reports were sent to her in hard copy, she might not have opened them, (B) she had at some point sought online access and then did not go online, or (C) the reports may have been mailed to her ex-husband with whom she was litigating a divorce at the time. She later corrected this testimony to say that Claimant (or his staff) caused her to sign the relevant advisory documents under false pretenses and that she had received the monthly reports electronically but did not recall looking over them at the time. She also stated that Claimant had “manufactured” at least one of the Respondent-produced exhibits. She testified that, prior to January 2020 she did not question Respondent about fees, acknowledging that fees were first charged for several months in 2019 and noted on the monthly reports. Further, she testified that she told Respondent about Claimant’s many acts of wrongdoing in addition to the fees. She further testified that, in a 2020 telephone call prior to meeting with Claimant after his move to Wells Fargo, he admitted that he had never mentioned fees, although she testified that at the 2020 meeting, he denied her allegations about the fees, and she knew he would never admit them. The customer also testified that in many ways, Claimant was not a good or attentive financial advisor.

(III) Other witnesses, who were called by both the Claimant and the customer

Claimant’s assistant, who testified that he was not authorized to discuss fees with the customer and that she did not discuss fees with him. Another witness testified that he accompanied the customer to Claimant’s office at UBS in 2018 and 2020 and did not hear Claimant discuss fees in 2018 and did not view her monthly statements or other documents.

(IV) Irrelevant Testimony

There were several issues as to which there was testimony but were deemed irrelevant, either at the time or subsequently. As examples, both Claimant and the customer speculated about the reasons for Respondent’s settlement. Claimant testified that he had made a great deal of money for the customer while her accounts were under his aegis, which she disputed; and the customer testified on Claimant’s alleged failings as an advisor. Some of this testimony was allowed in at the early stages of the proceeding, but as the issues became clearer, all this was ruled irrelevant either at the hearing or upon the Arbitrator’s consideration of the evidence.

## 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. Claimant’s claim for \$1.00 in compensatory damages is denied.
2. The Arbitrator recommends the expungement of all references to Occurrence Number 2064770 from registration records maintained by the CRD for Claimant Vincent John Fiorentino (CRD Number 1557805) with the understanding that, pursuant to Notice to Members 04-16, Claimant Vincent John Fiorentino 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 factually impossible or clearly erroneous.

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

The Arbitrator finds for the Claimant, Mr. Fiorentino and recommends the expungement of this complaint against him, on the grounds that the allegations made against him about fees were clearly erroneous, pursuant to FINRA Rule 2080(a), for the following reasons:

Claimant was a credible witness with simple testimony, that he did discuss fees with the customer. His testimony was limited by Respondent’s production of documents. However, a combination of his and the customer’s exhibits showed her signature of the crucial agreements, and receipt of monthly account statements; the statements included not only the amounts of fees charged but also notice of a sixty-day limit to contest any data on the statements. As noted, his BrokerCheck Report showed he had no other previous customer complaints against him either in the past and in his short time with Wells Fargo.

Respondent UBS, a member of FINRA and subject to its rules, did not oppose expungement. Respondent’s 2020 settlement with the customer did not seek Claimant’s personal or financial participation in the settlement. This could have been the result of a host of reasons, and as noted, the proceeding did not consider the various speculations on those reasons. However, it is difficult to believe that Respondent would have permitted Claimant’s expungement to go unopposed if it determined that Claimant’s actions constituted wrongdoing of the type the customer alleged. The customer was not a wholly credible witness. She was so dedicated to her case and did a mammoth amount of work represented in numerous motions, colloquies, exhibits, and the previously mentioned post hearing brief. The seriousness and determination with which she approached this proceeding was always palpable, and the Arbitrator has no doubt she believes she was truly wronged despite her settlement with Respondent. For example, as noted above, she testified that she had not signed the relevant agreements and then that she did sign them, albeit under false pretenses. She testified that she had not received monthly account statements on which fees were stated, and then that she did receive them. She testified that she complained of the fee charges to Respondent only in January 2020 after, in most cases, many months of being notified of them in monthly statements, as early as March 2019. She testified that Claimant manufactured documents which were apparently generated and thereafter unquestionably serviced by Respondent.

3. 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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent UBS Financial Services Inc. 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:

Four (4) pre-hearing sessions with a single Arbitrator @ \$50.00/session = \$ 200.00

Pre-Hearing Conferences: January 11, 2021 1 session  
June 8, 2021 1 session  
September 9, 2021 1 session  
December 7, 2021 1 session

Eleven (11) hearing sessions on expungement request @ \$50.00/session = \$ 550.00

Hearings: October 26, 2021 1 session  
October 29, 2021 1 session  
November 4, 2021 2 sessions  
November 8, 2021 2 sessions  
November 9, 2021 1 session  
November 22, 2021 1 session  
December 17, 2021 2 sessions  
December 21, 2021 1 session

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Total Hearing Session Fees = \$ 750.00

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**

Richard W. Cutler

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Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

**Arbitrator's Signature**

***Richard W. Cutler***

Richard W. Cutler  
Sole Public Arbitrator

***02/17/2022***

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 22, 2022

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