

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

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In the Matter of the Arbitration Between:

Claimant  
David George Ruckno

Case Number: 20-03192

vs.

Respondent  
UBS Financial Services Inc.

Hearing Site: Columbia, South Carolina

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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

**REPRESENTATION OF PARTIES**

For Claimant David George Ruckno: Mark S. Simms, Esq., Simms Law, P.A., Fort Lauderdale, Florida.

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

**CASE INFORMATION**

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

David George Ruckno signed the Submission Agreement: September 11, 2020.

Statement of Answer filed by Respondent on or about: October 13, 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 Numbers 1647755 and 1354361, and compensatory damages in the amount of \$1.00 from Respondent.

In the Statement of Answer, Respondent objected to Claimant's 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 November 2, 2021, Claimant advised that the customers in Occurrence Numbers 1647755 ("Customer A") and 1354361 ("Customer B") were 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 November 3, 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.

Customer A did not participate in the expungement hearing. The Arbitrator found that Customer A had notice of the expungement request and hearing.

Customer B appeared at the expungement hearing, made an opening statement, testified, examined Claimant, made a closing argument, and overall 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 occurrences in the CRD.

The Arbitrator noted that the disputes related to Occurrence Numbers 1647755 and 1354361 were not settled and, therefore, there were no settlement documents to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's testimony; Customer B's testimony; and all exhibits submitted by Claimant.

### **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 Numbers 1647755 and 1354361 from registration records maintained by the CRD for Claimant David George Ruckno (CRD Number 3053803) with the understanding that, pursuant to Notice to Members 04-16, Claimant 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:

This matter concerns the expungement of CRD Occurrence Numbers 1647755 and 1354361 for Associated Person David George Ruckno, CRD No. 3053803.

On the pleadings, oral testimony and documentary evidence presented, I find that Claimant has met his burden pursuant to the FINRA Code of Arbitration Procedure, Rule 2080 (b)(1)(A). I find the allegations in both occurrences are clearly erroneous.

#### Occurrence Number 1647755

This complaint concerned allegations of unauthorized transactions and unsuitable investment recommendations by Claimant. The claim was investigated by Respondent and denied.

The allegations in the BrokerCheck® Report in substance state that Customer A’s funds were sold without her authorization for the purpose of generating commissions and the funds invested in unsuitable investments for which the risk was not disclosed. Further, Customer A alleged that Claimant purchased a structured product without her authorization.

I find no meaningful evidence to support Customer A’s claims from the documents and testimony presented. I find the claim clearly erroneous.

Customer A had discussions with Claimant concerning her intended sale of her home, her existing portfolio, investments, cost basis for capital gains and desire to purchase a home with her new husband. Her investments were in the UBS Pace Program (“Pace”), a managed, mutual fund portfolio. The commission was a 1.5% flat, management fee and based on an appropriate asset allocation as shown on the Customer account application. The commission was discounted from 2.8% to 1.5%. No additional commissions were or could have been generated by transactions in Customer A’s managed account. The Pace account authorized automatic re-alignment from the initial, target allocations which was handled by the managers and not Claimant. The Pace application signed by Customer A had risk questions and she was informed of the proposed allocations. She received quarterly reports from the managers of the top ten holdings. I find the Pace investment suitable for Customer A.

Customer A and Claimant spoke at least quarterly. The Lehman Return Optimization S&P 500 investment was called a structured investment and 10% of the portfolio with Respondent. The investment provided for downside protection of 10% and upside of 20%, if the market moved higher. Customer A chose the range of protection. Claimant testified that he discussed the structured investment in detail, including its risks, debt characteristics and credit investment, as well as downside and upside protection. Customer A received the prospectus and a

conversation between Claimant and Customer A followed the receipt. The investment was A-rated at the time of purchase and every day thereafter until Lehman's sudden bankruptcy – a fact missed by all credit reporting agencies at the time. The failure of Lehman was not a fault of Claimant. I find the investment suitable at the time of purchase.

Customer A chose to obtain outside mortgage financing for her real property. She was not willing to consider Claimant's recommendations for a mortgage alternative or the use of margin (with the risks Claimant disclosed and possibility of calls to cover debt). Unfortunately, during 2007 to 2009, almost all asset allocations took a loss.

#### Occurrence Number 1354361

This complaint concerned allegations of the alleged failure of Claimant to place the sales proceeds from the sale of Customer B's condominium into her money market account rather than be invested. The claim was investigated by Respondent and denied.

The allegations in the BrokerCheck® Report state that Customer B alleges unsuitable investment recommendations, unauthorized trading, the unauthorized use of margin and misrepresentation and omission of material facts from April 2009 to August 2010.

I find no meaningful evidence to support Customer B's claims from the documents, Claimant's testimony, and examination by Customer B of Claimant. Customer B was given additional time to file supporting documents she believed to be relevant, but she declined to do so by the post-hearing date set for such additional submissions.

Customer B sold a condominium and requested that the funds be placed in her money market account so she could purchase another home. Claimant deposited the funds. Customer B's initial portfolio was in Walmart stock and Claimant suggested some diversification by use of covered calls to generate income (liquidity) and margin to protect the Walmart stock. Customer B signed the required account forms to include covered writing with moderate risk and capital appreciation. She previously had approval to use margin. She made at least one major purchase of \$30,000.00 from her margin account assets to acquire an automobile after discussing with Claimant obtaining a loan, leasing, sale of Walmart stock, or use of margin (after discussing margin risks). Naturally, this increased margin debt and that was known to Customer B.

The funds deposited into Customer B's account from the sale of the condominium were subject to an automatic margin call (sweep) and repayment of margin debt. This risk and process was disclosed to Customer B when she opened her accounts.

Customer B stated at the hearing that she agreed with Claimant in that he described the margin account and that margin calls could be made that would or could cause the sale of Walmart stock to cover them.

Customer B acquired an initial public offering by ING weeks before the margin call and received the prospectus at least ten (10) days before that. Claimant and Customer B discussed the security well in advance of the purchase. What Customer B did not account for in her complaint was that the ING purchase executed on March 31, 2005, almost immediately following her deposit of the condominium sales proceeds into her account. This resulted in the automatic use

of her sales proceeds from the condominium to cover the margin debt. Claimant never made any new investments and none, therefore, were unauthorized.

I find that both occurrences should be expunged as the continued reporting of them on the BrokerCheck® Report and CRD serves no meaningful investor protection or regulatory value.

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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Respondent UBS Financial Services Inc. is assessed the following:

Member Surcharge = \$ 150.00

#### **Postponement Fees**

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

June 28, 2021, postponement requested by Claimant = WAIVED  
August 27, 2021, joint postponement request = \$ 50.00  
October 4, 2021, postponement requested by Claimant = \$ 50.00

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Total Postponement Fees = \$ 100.00

The Arbitrator has assessed the total postponement fees to Claimant.

#### **Last-Minute Cancellation Fees**

Fees apply when a hearing on the merits is cancelled within ten calendar days before the start of a scheduled hearing session:

August 27, 2021, joint postponement request = \$ 600.00  
October 4, 2021, postponement requested by Claimant = \$ 600.00

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Total Last-Minute Cancellation Fees = \$ 1,200.00

The Arbitrator has assessed the total last-minute cancellation 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 with a single Arbitrator @ \$50.00/session = \$ 50.00  
Pre-Hearing Conference: October 4, 2021 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00  
Hearing: November 3, 2021 1 session

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Total Hearing Session Fee = \$ 100.00

The Arbitrator has assessed the entire hearing session fees to Claimant.

All balances are payable to FINRA Dispute Resolution Services and are due upon receipt.

**ARBITRATOR**

John P. Cullem

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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**

***John P. Cullem***

John P. Cullem  
Sole Public Arbitrator

**11/24/2021**

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.

November 24, 2021

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