

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
David Ruckno

Case Number: 20-03198

vs.

Respondent
UBS Financial Services Inc.

Hearing Site: Columbia, South Carolina

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 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 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 request for expungement and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Number 1485335 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 and requested that all costs and fees associated with the Statement of Claim be assessed solely against Claimant.

At the beginning of 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 or about July 16, 2021, July 20, 2021 and September 22, 2021, Claimant advised that the customer in Occurrence Number 1485335 ("Customer") was served with a copy of the Statement of Claim, notice of the date and time of the expungement hearing and of the Customer's right to participate therein. On or about July 16, 2021, July 20, 2021 and September 22, 2021, Claimant filed with FINRA Dispute Resolution Services proof of service via USPS upon the Customer, advising that the Customer was served with a copy of the Statement of Claim and notice of the date and time of the expungement hearing.

On or about September 20, 2021, Respondent filed with FINRA Dispute Resolution Services a notice to serve as confirmation that Respondent will not participate in the expungement hearing, as stated in its Statement of Answer.

The Arbitrator conducted a recorded, telephonic hearing on September 28, 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 Customer also did not participate in the expungement hearing. The Arbitrator found that the Customer 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 occurrence in the CRD.

The Arbitrator also reviewed the settlement documentation related to Occurrence Number 1485335, 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: Claimant's testimony and documents submitted into evidence; Claimant's BrokerCheck® Report; and the Customer's Application.

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 1485335 from registration records maintained by the CRD for Claimant David Ruckno (CRD Number 3053803) with the understanding that, pursuant to Notice to Members 04-16, Claimant David Ruckno 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 false.

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

The Arbitrator reviewed Claimant’s BrokerCheck® Report and noted that Claimant did not contribute to the settlement, and the amount of the settlement was approximately nineteen percent (19%) of the original damage request. Claimant testified that he was not involved during the negotiations of the settlement. A copy of the Customer’s Application reflected risk tolerance as “Aggressive Speculative” and objective as “Current Income and Capital Appreciation.” In addition, copies of the asset accounts supported the risk tolerance and objective of the Customer. Claimant testified that the Customer was an experienced investor and had been an investor during the early 2000’s market downturn. Claimant testified that Claimant provided the Customer with various investment options to meet the Customer’s risk tolerance and objective.

Based on Claimant’s testimony and documents submitted into evidence, the stipulated accusations stated in the customer complaint are false. Documents were entered into evidence supporting Claimant’s testimony. Respondent and the Customer opted not to appear during the expungement hearing.

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

Late Pre-Hearing Cancellation Fees

Fees apply when a pre-hearing conference is cancelled within three business days of the scheduled conference:

January 7, 2021, cancellation requested by Claimant and Respondent = \$ 100.00

Total Late Pre-Hearing Cancellation Fees = \$ 100.00

The Arbitrator has assessed \$50.00 of the late pre-hearing cancellation fees to Claimant.

The Arbitrator has assessed \$50.00 of the late pre-hearing cancellation fees to Respondent.

Postponement Fees

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

August 4, 2021, postponement requested by Claimant and Respondent = \$ 50.00

Total Postponement Fees = \$ 50.00

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 4, 2021, cancellation requested by Claimant and Respondent = \$ 600.00

Total Last-Minute Cancellation Fees = \$ 600.00

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) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing: September 28, 2021 1 session

Total Hearing Session Fees = \$ 50.00

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

Stuart K. Furman

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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

Stuart K. Furman

Stuart K. Furman
Sole Public Arbitrator

09/30/2021

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.

September 30, 2021

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