

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Angus Miller

Case Number: 20-03221

vs.

Respondent
UBS Financial Services Inc.

Hearing Site: Jersey City, New Jersey

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 Angus Miller: Sarah K. Yates, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

For Respondent UBS Financial Services Inc.: Omar Perez, Esq., UBS Business Solutions US LLC, Nashville, Tennessee.

CASE INFORMATION

Statement of Claim filed on or about: September 11, 2020.
Angus Miller signed the Submission Agreement: September 11, 2020.

Statement of Answer filed by Respondent on or about: October 19, 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 1081057 and 1414330; and compensatory damages in the amount of \$1.00.

In the Statement of Answer, Respondent requested that the Arbitrator deny Claimant's request for \$1.00 in compensatory damages, and assess all costs and fees 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 26, 2021, Claimant advised that the customer in Occurrence Number 1414330 ("customer") was served with the Statement of Claim and notice of the date and time of the expungement hearing. On February 26, 2021, Claimant advised that the customer in Occurrence Number 1081057 is deceased.

The Arbitrator conducted a recorded, telephonic hearing on March 9, 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 in Occurrence Number 1414330 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 did not review the settlement documentation related to Occurrence Number 1414330. No settlement documents were provided to the Arbitrator. The Arbitrator noted that the settlement was part of a global settlement involving Merrill Lynch. As explained on Claimant's CRD: "This matter involves the sale of Auction Rate Securities (ARS). The transaction(s) at issue took place before mid-February 2008, when the ARS market suffered widespread auction failures and illiquidity. The financial advisor did not cause, contribute, or have any control whatsoever over these market events. The firm reached agreement with certain of its regulators, pursuant to which it repurchased ARS for their full par value from certain clients, including the instant client, whether they complained or not. The financial advisor was not a party to that agreement, did not make any payment to the client, and was not asked to and did not contribute to the repurchase amount. ..." Based on Claimant's testimony, the Arbitrator also 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.

The Arbitrator noted that the dispute related to Occurrence Number 1081057 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: the pleadings, exhibits, Claimant's testimony, and Claimant's BrokerCheck® Report.

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 Number 1081057 from registration records maintained by the CRD for Claimant Angus Miller (CRD Number 2875170) with the understanding that, pursuant to Notice to Members 04-16, Claimant Angus Miller 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 customer complaint relates to a letter from a long-time, experienced Claimant’s customer of who alleged that Claimant had misled the customer concerning two Stock Return Income Debt Securities (“STRIDES”) investments. According to Claimant, who took contemporaneous notes and communicated with the customer regularly, the customer was educated and well-informed about the investments and was an aggressive investor. Ultimately, the customer made a profit on the STRIDES investments. The customer did not follow-up on the complaint and no arbitration was filed.

2. The Arbitrator recommends the expungement of all references to Occurrence Number 1414330 from registration records maintained by the CRD for Claimant Angus Miller (CRD Number 2875170) with the understanding that, pursuant to Notice to Members 04-16, Claimant Angus Miller 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:

It is apparent that the customer's purchase of the Auction Rate Securities was not unauthorized. This conclusion is supported by e-mails between Claimant and the customer, Claimant's contemporaneous notes (about which he testified but did not produce), Merrill Lynch monthly statements, and Claimant's credible testimony. In addition, it appears that the Auction Rate Securities would have been suitable for the customer and consistent with the customer's investment objectives based upon the testimonial and documentary evidence presented at the hearing. Indeed, these securities were essentially treated as close to cash or cash equivalents by many in the industry. Claimant was not responsible for the illiquidity of the Auction Rate Securities and could not have reasonably anticipated the unprecedented problems encountered by the entire market in connection with those securities. The customer was eventually made whole by Merrill Lynch as part of a global settlement to which Claimant was not a party.

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:

One (1) pre-hearing session with a single Arbitrator @ \$50.00/session = \$ 50.00
Pre-Hearing Conference: January 5, 2021 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing: March 9, 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

Louis H Miron

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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

Louis H Miron

Louis H Miron
Sole Public Arbitrator

03/17/2021

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.

March 18, 2021

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