

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

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In the Matter of the Arbitration Between:

Claimant  
Xavier A. Aguayo

Case Number: 20-03237

vs.

Respondent  
UBS Financial Services Incorporated of Puerto Rico

Hearing Site: San Juan, Puerto Rico

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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 Xavier A. Aguayo: Linette Figueroa-Torres, Esq. and Russell Del Toro Parra, III, Esq., Toro Colon Mullet PSC, San Juan, Puerto Rico.

For Respondent UBS Financial Services Incorporated of Puerto Rico: Rey F. Medina-Velez, Esq., UBS Financial Services Incorporated of Puerto Rico, San Juan, Puerto Rico.

**CASE INFORMATION**

Statement of Claim filed on or about: September 11, 2020.  
Xavier A. Aguayo signed the Submission Agreement: September 11, 2020.

Statement of Answer filed by Respondent on or about: October 20, 2020.  
UBS Financial Services Incorporated of Puerto Rico 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 supported Claimant’s expungement request.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested: expungement of Occurrence Numbers 1692749, 1715940, 1733439, 1774331, 1824740, 1704640, and compensatory damages in the amount of \$1.00 from Respondent.

In the Statement of Answer, Respondent requested: a finding in favor of Claimant obtaining expungement of the underlying arbitrations and denial of Claimant's request for compensatory damages.

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 May 27, 2021, Claimant filed a Declaration under Penalty of Perjury of Russell del Toro-Parra, III as to Proofs of Service of Notices to Underlying Customers advising that the customers in Occurrence Numbers 1824740 ("Customer A"), 1704640 ("Customer B"), 1774331 ("Customer C"), 1733439 ("Customer D"), 1715940 ("Customer E"), and 1692749 ("Customer F") (collectively the "Customers") were served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded, telephonic on June 18, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing and supported the request for expungement.

The Customers 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 1824740, 1704640, 1774331, 1733439, 1715940, and 1692749, 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.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Statement of Claim; Claimant's CRD; the statements of claim, answers and settlement documents in the underlying claims; Claimant's proposals regarding diversification; and account statements for the Customers.

### **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 Numbers 1824740, 1704640, 1774331, 1733439, 1715940, and 1692749 and from registration records maintained by the CRD for Claimant Xavier A. Aguayo (CRD Number 2926408) with the understanding that, pursuant to Notice to Members 04-16, Claimant Xavier A. Aguayo 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:

As an overview, the six matters where expungement was sought revolve, from a chronological standpoint, around the collapse of the Puerto Rico bond market, along with the failure by the multiple account holders to diversify (despite Claimant suggesting they do so). Though some of the securities in question may have been suitable at some point, the lack by the Customers to seek diversification was a significant factor in most of the losses that gave rise to the additional complaints. It was not the recommendations of Claimant that created these losses.

Occurrence Number 1824740

Customer A made very few changes to diversify their assets, focusing more on yield than the ultimate quality of what they held. There was significant borrowing against this account which only worsened matters when the Puerto Rico bond market collapsed.

Occurrence Number 1704640

Customer B had a highly concentrated Puerto Rico bond portfolio and rejected a majority of Claimant’s recommendations of diversification. Furthermore, Claimant inherited Customer B (as well as Customer A) with most of the transactions complained of, which preceded Claimant’s involvement.

Occurrence Number 1774331

Again, recommendations to diversify Puerto Rico holdings were rejected by Customer C, the investor in question. The account was leveraged to some extent as Customer C was borrowing money to increase investments. When the market turned due to the loss of the value of Puerto Rico holdings, Customer C did not have enough to cover the margin and as a result, had to liquidate most of their holdings to cover the account.

Occurrence Number 1733439

The question at issue focused on suitability because of Customer D's financial issues. When Customer D became unemployed and the Puerto Rico job market collapsed, the investment mix (which was heavily concentrated in Puerto Rico bonds due to their tax-free nature) was not helpful to Customer D, who needed income to live on. However, most of Customer D's portfolio was never recommended by Claimant. Claimant inherited this account from another brokerage firm and made only a few recommendations, which were suitable for Customer D.

Occurrence Number 1715940

Customer E failed to follow Claimant's recommendations regarding diversification from the Puerto Rico bond market. Related to the matter immediately below this, Customer E sought certain asset protection and gift tax avoidance but failed to follow Claimant's recommendations, which would have generated very similar yields with less volatility.

Occurrence Number 1692749

Customer F concentrated more on tax ramifications rather than the concerns over a portfolio that seemed in need of rebalancing. Furthermore, in this matter as well as the matter immediately above it, Customer F was seeking advice from Customer F's accountant who apparently didn't always agree with Claimant's recommendations.

Claimant is not responsible for the losses incurred by the underlying Customers who each filed arbitration claims against Respondent. Claimant urged each of the Customers involved here to diversify their portfolios with limited success in getting them to do it. Market conditions as well played a large part in the losses—not Claimant's suggestions. It is clear that Claimant takes his business seriously. Losses in the accounts were not caused by Claimant. What is especially appropriate is that these losses could have been mitigated to a great extent if Claimant's advice was followed.

2. Respondent is liable for and shall pay to Claimant \$25.00 representing reimbursement of the non-refundable portion of the filing fee previously paid by Claimant.
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 is assessed the following:

Member Surcharge = \$ 150.00

**Postponement Fees**

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

April 22, 2021, postponement requested by Claimant and Respondent	= \$ 50.00
<hr/> Total Postponement Fees	<hr/> = \$ 50.00

The Arbitrator has assessed \$50.00 of the postponement fees to Respondent.

**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 29, 2020 1 session	

One (1) hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing: June 18, 2021 1 session	

<hr/> Total Hearing Session Fees	<hr/> = \$ 100.00
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Pursuant to the agreement of the parties, the Arbitrator has assessed the total hearing session fees to Respondent.

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

**ARBITRATOR**

Louis David Huss

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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 David Huss***

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Louis David Huss  
Sole Public Arbitrator

**07/01/2021**

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Signature Date

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July 01, 2021

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