

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Xavier A. Aguayo

Case Number: 20-03240

vs.

Respondent
UBS Financial Services Incorporated of Puerto Rico

Hearing Site: San Juan, Puerto Rico

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 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 of Puerto Rico, San Juan, Puerto Rico.

CASE INFORMATION

Petition for Expungement filed on or about: September 11, 2020.

Xavier A. Aguayo Diaz signed the Submission Agreement: September 11, 2020.

Response to Petition for Expungement filed by Respondent on or about: October 22, 2020.

UBS Financial Services Incorporated of Puerto Rico signed the Submission Agreement: September 16, 2020.

CASE SUMMARY

In the Petition for Expungement, Claimant asserted a claim seeking expungement of customer dispute information from registration records maintained by the Central Registration Depository (“CRD”).

In the Response to Petition for Expungement, Respondent supported Claimant’s expungement request and stated that it does not intend to participate in the final hearing.

RELIEF REQUESTED

In the Petition for Expungement, Claimant requested: expungement of Occurrence Numbers 1708173, 1726248, 1886629 and 2029821, and damages in the amount of \$1.00 from Respondent.

In the Response to Petition for Expungement, Respondent requested that Claimant's request for \$1.00 in compensatory damages be denied.

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 April 23, 2021, Claimant filed a Declaration Under Penalty of Perjury of Russell Del Torro-Parra, III as to Proofs of Service of Notice of Expungement Proceedings to Underlying Customers Pursuant to the Arbitrator's Initial Prehearing Conference Scheduling Order Dated January 5, 2021 ("Declaration"). The Declaration reflected the following: on September 17, 2020, a copy of the Petition for Expungement, along with all of its exhibits, was sent via e-mail and via certified mail to the attorney of record for each of the underlying customers in Occurrence Numbers 1708173, 1726248, 1886629 and 2029821 (collectively, the "Customers"); and on January 22, 2021, notice of the date and time of the May 13, 2021 expungement hearing, as well copies of the Scheduling Order and related correspondence, was sent via e-mail and via certified mail to the attorney of record for each of the Customers.

The Arbitrator conducted a recorded hearing by videoconference on May 13, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the hearing and did not oppose the request for expungement.

None of the Customers participated 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 1708173, 1726248, 1886629 and 2029821, 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: Claimant's BrokerCheck® Report, Customers' brokerage statements, Customers' underlying Statements of Claim and Respondent's respective Answers to said claims,

settlement documents, notices of this hearing to the Customers and/or their counsel, investment proposals to individual Customers, financial plans and goal analysis.

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:

The Arbitrator recommends the expungement of all references to Occurrence Number 1708173, 1726248, 1886629 and 2029821 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 with respect to all of the Occurrences:

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:

Occurrence Number 1708173

Claimant "inherited" the servicing of the portfolio from a resigning employee, and made little, if any, of the investments made. Investments made were tax advantaged/tax exempt under Puerto Rico law. However, due to issues with the Puerto Rico markets generally and the bond market in particular, diversification was recommended to the Customer and the Customer only marginally followed the advice of Claimant, resulting in losses that were settled by Respondent without participation of Claimant in negotiation, settlement or funding.

Occurrence Number 1726248

The Customers remain clients of Claimant. Claimant suggested portfolio diversification rather than concentration in Puerto Rico securities and stock in the Customers' employer. Some suggestions were followed by the Customers, though not all. Claimant wanted to lower the risk profiles of the investments, but the Customers didn't follow recommendations, resulting in portfolio losses. Respondent settled the matter without participation of Claimant in negotiation, settlement or funding.

Occurrence Number 1886629

The Customer was Claimant's wife's uncle, now deceased. He didn't follow suggested portfolio strategy, resulting in some loss. As in other matters hereinabove and below, the

goal was to move the Customer out of Puerto Rico government debt instruments and into Puerto Rico mortgage secured investments. This Customer (like others) was reluctant to follow advice due to the debt instruments historic rates of return on investments. With the collapse of the Puerto Rico bond market, investments suffered.

Occurrence Number 2029821

As in some of the other matters here, the Customer was a former employee who held a non-diversified portfolio. Claimant suggested diversification, and again, the Customer only marginally followed the advice of Claimant. Claimant actively sought for the Customer to pursue a lower risk/higher yield strategy, to which, once again, the Customer only gave "lukewarm" support.

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

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: May 13, 2021 1 session

Total Hearing Session Fees = \$ 100.00

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

Louis David Huss
Sole Public Arbitrator

05/18/2021

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.

May 18, 2021

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