

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Brian Patrick Rorick

Case Number: 21-00001

vs.

Respondent
UBS Financial Services Inc.

Hearing Site: Denver, Colorado

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 Brian Patrick Rorick (“Claimant”): Michelle Atlas, Esq., HLBS Law, Westminster, Colorado.

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

CASE INFORMATION

Statement of Claim filed on or about: December 31, 2020.
Claimant signed the Submission Agreement: December 31, 2020.

Statement of Answer filed by Respondent on or about: February 26, 2021.
Respondent signed the Submission Agreement: February 26, 2021.

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:

1. Expungement of Occurrence Number 1453056 from Claimant's CRD records pursuant to FINRA Rule 2080(b)(1)(A), as the claim, allegation, or information is factually impossible or clearly erroneous;
2. Expungement of Occurrence Number 1453056 from Claimant's CRD records pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false;
3. Deletion of all Disclosure Reporting Pages accompanying Occurrence Number 1453056;
4. Compensatory damages in the amount of \$1.00 from Respondent; and
5. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested:

1. Claimant's request for compensatory damages in the amount of \$1.00 be denied; and
2. All costs and fees associated with the claim be assessed solely 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 May 18, 2021, Claimant advised that the customers in Occurrence Number 1453056 ("Customers") were served with the Statement of Claim and notice of the date and time of the expungement hearing. On June 1, 2021, Claimant filed an Affidavit confirming that 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 hearing on June 23, 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 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 occurrence in the CRD.

The Arbitrator noted that the dispute related to Occurrence Number 1453056 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: pleadings; Claimant's BrokerCheck® Report; Claimant's testimony; and Claimant's exhibits.

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 1453056 from registration records maintained by the CRD for Claimant Brian Patrick Rorick (CRD Number 4525184) with the understanding that, pursuant to Notice to Members 04-16, Claimant Brian Patrick Rorick 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:

Claimant, age 48, is married, has two children, resides in Golden, CO, and is active in his community and his church, including in charitable causes. Claimant is a 1996 graduate of Indiana University where he majored in accounting. Later, Claimant obtained a Certified Public Accounting designation which is currently inactive. For a period of time, Claimant was a financial consultant.

Claimant has held his securities license for nearly 20 years and has received a Certified Financial Planner ("CFP") designation and variety of other wealth management certificates. Claimant has been employed as a broker by Merrill Lynch Pierce Fenner & Smith Inc. from 2002 to 2007; then by Respondent UBS Financial Services Inc. ("UBS") from February 2007 to July 2011; and, from August 2011 to the present date, by AVEO Capital Partners, LLC, Greenwood Village, CO, which is a firm that Claimant co-founded. During this time, he has serviced hundreds of clients, including for about two months in 2008, the Customers involved in the underlying claim. Other than the Customers' complaint, Claimant has no other complaints on his BrokerCheck records or otherwise.

In the summer of 2008, Claimant met the Customers in a social setting. Shortly thereafter, the Customers asked Claimant and UBS to provide them with financial investment advice and service. The Customers advised Claimant that they were dissatisfied with Smith Barney and asked Claimant if he would serve as their financial advisor. The Customers thereupon arranged to transfer their portfolio from Smith Barney to UBS to be managed by Claimant. At the time, the Customers' portfolio, valued in excess of \$2 million, consisted of dozens of individual stocks, bonds, and annuities. About 10 percent of the Customers' portfolio consisted of American Depositary Receipts

("ADRs"), which are U.S. bank issued certificates that represent shares of stock in foreign companies or foreign currencies.

In August 2008, due to the then-uncertain financial market conditions, Claimant recommended that the Customers place stop loss orders on the Customers' individual stocks and ADRs. As Claimant had no discretion to effect trades in the Customers' portfolio without the Customers' instructions, Claimant obtained the Customers' instructions to place these stop loss orders on the Customers' individual stocks and ADRs in mid-August 2008.

As Claimant processed stop loss orders, it developed that certain of the Customers' ADRs were not eligible for stop loss orders. By email dated August 20, 2008, Claimant notified the Customers that he would be unable to place Good-Til-Cancelled ("GTC") sell orders on these few ADRs. Claimant thereupon asked the Customers how they wished to proceed with these ADRs. Although promising to provide Claimant with instructions as to these ADRs, the Customers failed to follow up with Claimant or to provide any such instructions.

On October 6, 2008, as financial market conditions continued to deteriorate, Claimant again sought instructions from the Customers on what the Customers wanted to do with these remaining ADRs and the Customers' other investments. On October 6, 2008, the Customers instructed Claimant to sell all of the Customers' remaining equities, which was accomplished on that same day.

In mid-October 2008, the Customers contacted Claimant and related that they were dissatisfied that the ADRs which stop loss orders could not be placed had experienced a decline in value and they were thinking of filing a complaint against Smith Barney for recommending the ADRs in the first place. Claimant responded to the Customers that, while that was their choice, Claimant did not think a complaint was warranted under the circumstances.

On October 13, 2008, the Customers telephonically contacted a representative of UBS about their concerns over the fact that that the ADRs for which stop loss orders could not be placed had experienced a decline in value. After investigating the Customers' complaint, UBS notified the Customers, by letter dated January 28, 2009, as follows:

"Based on our records, on August 19, 2008, Mr. Rorick advised you [the Customers] that he [Mr. Rorick] would be unable to place GTC sell orders on certain of your American Deposit Receipt ("ADR") equity holdings. Subsequently, Mr. Rorick was able to enter GTC sell orders as to most of your ADR holdings. However, on August 20, 2008, Mr. Rorick sent you an email containing a short list of ADR's that were not eligible for stop loss protection and he recommended that you further discuss the issue. Our records reflect that on the same day, you indicated that you would contact Mr. Rorick to further discuss. I understand that you did not contact Mr. Rorick or provide him with any further instructions regarding the ADR's that did not have stop loss protection."

Shortly thereafter, Claimant recommended that the Customers find another investment advisor whereupon, as requested by Claimant, the Customers transferred their portfolio to another investment advisor.

During the few months that Customers had their account with UBS, the Customers did not at any time make any investments through Claimant or UBS.

On about March 23, 2009, the Customers reported this dispute to Claimant's CRD and BrokerCheck records. The Customers alleged that Claimant "failed to place stop orders" as instructed. Damages estimated to be in excess of \$5,000.

UBS management, including attorneys, investigated the dispute and related to the Customers, by letter dated August 11, 2009, related to the Customers as follows:

"As to the concerns you raised regarding the failure of Mr. Rorick to inform you that stop loss orders could not be placed on some of your ADR investments, I understand that in August 2008, you transferred various positions to UBSFS from your Smith Barney account. I also understand that you discussed placing stop losses on various ADRs in your account. As you may recall, on August 20, 2008, Mr. Rorick sent you an e-mail wherein he disclosed to you that the stop loss order you requested would not apply to thirty-eight of your ADRs that traded in foreign currencies, see attached. I understand that after sending you the e-mail, Mr. Rorick had several conversations with you regarding the stop loss on your foreign traded ADRs. As you know, financial advisors cannot execute trades without verbal authorization from clients. Thus, no action was taken on the foreign traded ADRs in your account until Mr. Rorick received your instructions to sell the positions. Based on the foregoing, we find that you were made aware that stop loss orders could not be placed on your foreign traded ADR investments and you made the ultimate decision to sell these positions."

There is no further response from the Customers in the record and the Customers did not further pursue their claim against Claimant in arbitration or otherwise.

In view of the foregoing, the Arbitrator finds and concludes that the underlying claim, as to Claimant and pursuant to FINRA Rule 2080(b)(1)A) and (b)(1)C), is factually impossible or clearly erroneous and/or false and that the customer dispute (Occurrence Number 1453056) should be expunged from Claimant's Central Registration Depository records.

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 = \$ 1,575.00

**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 event(s) giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge = \$ 1,900.00
Member Process Fee = \$ 3,750.00

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 @ \$1,125.00/session	= \$ 1,125.00
Pre-Hearing Conference: April 13, 2021 1 session	
One (1) hearing session on expungement request @ \$1,125.00/session	= \$ 1,125.00
Hearing: June 23, 2021 1 session	
Total Hearing Session Fees	= \$ 2,250.00

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

Michael Jeffrey Norton

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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

Michael Jeffrey Norton

Michael Jeffrey Norton
Sole Public Arbitrator

07/07/2021

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.

July 07, 2021

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