

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

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In the Matter of the Arbitration Between:

Claimant  
David L. Rojas

Case Number: 21-00105

vs.

Respondent  
UBS Financial Services Incorporated of Puerto Rico  
UBS Financial Services Inc.

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. Members

**REPRESENTATION OF PARTIES**

For Claimant David L. Rojas: Sonia M. López del Valle, Esq. and Roberto C. Quiñones-Rivera, Esq., McConnell Valdés LLC, San Juan, Puerto Rico.

For Respondents UBS Financial Services Incorporated of Puerto Rico (“UBSPR”) and UBS Financial Services Inc. (“UBS”): Rey F. Medina Vélez, Esq., UBS Financial Services Incorporated of Puerto Rico, San Juan, Puerto Rico.

**CASE INFORMATION**

Petition for Expungement filed on or about: January 15, 2021.  
David L. Rojas signed the Submission Agreement: January 15, 2021.

Response to Petition for Expungement filed by Respondents on or about: February 3, 2021.  
UBS Financial Services Incorporated of Puerto Rico signed the Submission Agreement: February 3, 2021.  
UBS Financial Services Inc. signed the Submission Agreement: February 3, 2021.

**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, Respondents did not oppose Claimant’s expungement request.

### **RELIEF REQUESTED**

In the Petition for Expungement, Claimant requested expungement of Occurrence Number 1795365 and compensatory damages in the amount of \$1.00 from Respondents.

In the Response to Petition for Expungement, Respondents requested that a finding be entered by the Arbitrator in favor of Claimant.

At the hearing, Claimant withdrew the request for \$1.00 in compensatory damages.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

On June 11, 2021, Claimant advised that the customer in Occurrence Number 1795365 ("Customer") was 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 August 19, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondents participated in the expungement hearing and as stated in the Statement of Answer, did not oppose the request for expungement.

The Customer 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 1795365, 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: the Statement of Claim in the underlying action and the answer thereto; Claimant's Petition for Expungement; Respondents' Response to Petition for Expungement; Claimant's Exhibits 1-37 and Supplemental Exhibits 1-8; Claimant's testimony; and argument of Respondents' counsel in favor of granting expungement.

### **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 1795365 from registration records maintained by the CRD for Claimant David L. Rojas (CRD Number 3139380) with the understanding that, pursuant to Notice to Members 04-16, Claimant David L. Rojas 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 registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

The claim, allegation, or information is false.

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

Claimant is a resident of Puerto Rico and at all times relevant to this case, a Registered Representative with FINRA and an Associated Person under FINRA Rules. Between February 1999 and April 2007, Claimant was employed at Oriental Financial Services Corp. in San Juan, Puerto Rico. From April 2007 to the present, Claimant has been employed at UBS Financial Services Inc. of Puerto Rico in San Juan. Claimant is registered with nine securities self-regulatory organizations and in seven states and territories.

When Claimant became the Customer's financial adviser ("FA") at Respondent UBSPR, his accounts were completely concentrated in Puerto Rico ("PR") investments. Because Claimant determined that was not a prudent financial strategy, he recommended diversification of the Customer's portfolio. By December of 2012, the Customer's accounts at Respondent UBSPR reflected substantial diversification. More specifically, by that time only 40% of the Customer's portfolio was still invested in PR securities.

Having taken into consideration all of the documentary evidence, as well as Claimant's testimony, the Arbitrator finds that Claimant made sound and suitable recommendations serving as the Customer's FA which resulted in substantial risk reduction in the Customer's portfolio. Claimant's diversification strategy hinged on the Customer selling PR funds to purchase U.S.-based securities. Claimant repeatedly spoke to the Customer about this strategy. However, the Customer resisted following the Claimant's recommendations. The Customer was convinced that he needed to continue holding substantial PR investments because they had certain tax advantages and provided the Customer with regular income that he already had been receiving over a number of years. The Customer was concerned about his substantial monthly overhead and

recurring liabilities. During the summer of 2013, there was a collapse of the PR municipal bond market which negatively impacted the Customer's portfolio. Clearly, that collapse was beyond Claimant's control. It is noteworthy that Claimant's BrokerCheck® report shows that he did not have a single case brought against him from 1999 through 2014. The first case involving the Claimant was not brought until a full year after the PR municipal bond market crash. The Customer was a civil engineer and land surveyor who built a very successful business taking on large-scale PR government construction projects.

The Customer had several accounts at Respondent UBSPR which he first opened in 2008. The Claimant did not become the Customer's FA until February of 2010. Whenever the Customer met with Claimant, his attorney was present. The Customer consulted with his attorney about all of his investment decisions and did not enter into any transactions which that attorney would not support. The Customer also conferred with his accountant about his investment decisions, and that accountant also was present at most of the meetings Customer had with the Claimant. It is clear that Claimant's repeated and consistent advice to the Customer was for the purpose of reducing his exposure to excessive PR credit risk by increasing his investments in safer U.S.-based securities. These recommendations were sound even though there would be some loss of the Customer's tax benefits that PR investments provided him. Again, prior to the Claimant becoming the Customer's FA, the Customer had been satisfied with excessive concentration in PR securities having obtained high tax-advantaged monthly income needed to meet his recurring expenses and pay for a lavish lifestyle. The Customer's mind-set resulted in his only accepting some of the Claimant's investment advice. The Customer evinced ongoing resistance to having a more balanced portfolio. Although the Customer did not agree to fully implement Claimant's diversification strategy, the Customer still ended up benefitting financially. Had the Customer not diversified as much as he did as a result of Claimant's repeated recommendations, after the 2013 PR bond market crash the Customer's losses would have been much more substantial.

The Customer and Respondents entered into a settlement agreement in the underlying action (Claimant's Exhibit 4). Claimant did not participate in the settlement negotiations, and he was not a party to the settlement agreement. Claimant did not participate in, or contribute to the settlement, and the agreement was not conditioned on any matter relating to Claimant. Respondents agreed to settle with the customer solely for business reasons. The underlying action was listed on Claimant's CRD record only because he was mentioned in the Statement of Claim in the underlying action and, therefore, it was a reportable event.

The Arbitrator finds that Claimant's testimony was fully credible as to all material facts alleged in the Petition. The Arbitrator also finds that all exhibits received into evidence, about which Claimant testified, support expungement on each of the three grounds under Rule 2080.

2. Respondent is liable for and shall pay to Claimant \$375.00, representing reimbursement of the nonrefundable portion of the claim 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:

Expungement Filing Fee	=\$ 1,575.00
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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 parties, Respondents UBSPR and UBS are each 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: June 1, 2021	1 session

One (1) hearing session on expungement request @ \$1,125.00/session	=\$ 1,125.00
Hearing: August 19, 2021	1 session

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Total Hearing Session Fees	=\$ 2,250.00
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Pursuant to the parties' agreement, the Arbitrator has assessed the total hearing session fees jointly and severally to Respondents.

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

**ARBITRATOR**

Martin A. Feigenbaum

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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**

***Martin A. Feigenbaum***

Martin A. Feigenbaum  
Sole Public Arbitrator

**08/27/2021**

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.

August 27, 2021

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