

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Kimberly Chin Muska

Case Number: 21-00665

vs.

Respondent
UBS Financial Services Inc.

Hearing Site: Portland, Oregon

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 Kimberly Chin Muska (“Claimant”): David I. Hantman, Esq., Bressler, Amery & Ross, P.C., New York, New York.

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

CASE INFORMATION

Statement of Claim filed on or about: March 10, 2021.
Claimant signed the Submission Agreement: March 10, 2021.

Statement of Answer filed by Respondent on or about: March 22, 2021.
Respondent signed the Submission Agreement: March 22, 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 expungement of Occurrence Number 1467256 from her CRD records pursuant to FINRA Rule 2080(b)(1)(A) – (C), as:

- a. the claim, allegation, or information is factually impossible or clearly erroneous;
- b. Claimant was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation or conversion of funds; and
- c. the claim, allegation, or information is false.

In the Statement of Answer, Respondent requested all costs and fees associated with the claim be assessed to Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

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

On April 19, 2021, Claimant filed an obituary reflecting that the customer involved in Occurrence Number 1467256 ("Customer") is deceased and therefore Claimant was unable to serve the Customer with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a telephonic hearing on May 10, 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 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 there was no individual settlement agreement related to Occurrence Numbers 1467256 as the complaint was related to the illiquidity of the Customer's Auction Rate Securities ("ARS") and the complaint was resolved as part of a global settlement between Respondent and securities regulators. The Arbitrator noted that Claimant was not involved in the global settlement agreement and did not contribute to the settlement amount, which was a repurchase of the ARS at par value. The Arbitrator also noted that the settlement was not conditioned on the Customer not opposing the request for expungement.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: pleadings; Claimant's exhibits; Claimant's BrokerCheck® Report; and Claimant's testimony.

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 1467256 from registration records maintained by the CRD for Claimant Kimberly Chin Muska (CRD Number 4124515) with the understanding that, pursuant to Notice to Members 04-16, Claimant Kimberly Chin Muska 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 Arbitrator has made the above Rule 2080 findings based on the following reasons:

The complaint is a product-related complaint directed to Respondent about the industry-wide breakdown of the ARS market. Claimant was not involved in any sales practice violation because she was not the financial advisor who recommended the ARS investments to the Customer in April and May 2005 and was not the financial advisor at the time of the purchase in April and May 2005 or at the time of the ARS market failure in February 2008. Claimant was assigned the accounts of the Customer in March 2008 and was tasked with the administrative aspect of addressing the illiquidity of the ARS and communicating with the Customer on the status of Respondent’s efforts to restore liquidity. Ultimately, the Customer did not suffer any losses on her ARS Investment, but rather, had a net profit.

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 events 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) hearing session on expungement request @ \$450.00/session | = \$ | 450.00 |
| Hearing: May 10, 2021 1 session | | |
| <hr/> Total Hearing Session Fees | = \$ | 450.00 |

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

Katherine Hendricks

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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

Katherine Hendricks

Katherine Hendricks
Sole Public Arbitrator

05/23/2021

Signature Date

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May 24, 2021

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