Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Brian Andrew Blackburn

Case Number: 21-00722

vs.

Respondent
UBS Financial Services Inc.

Hearing Site: Columbia, South Carolina

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 Andrew Blackburn: David I. Hantman, Esq., Bressler, Amery & Ross, P.C., New York, New York.

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

CASE INFORMATION

Statement of Claim filed on or about: March 18, 2021.
Brian Andrew Blackburn signed the Submission Agreement: March 18, 2021.

Statement of Answer filed by Respondent on or about: April 2, 2021.
UBS Financial Services Inc. signed the Submission Agreement: April 2, 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 Numbers 1433452 and 2047598.

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

OTHER ISSUES CONSIDERED AND DECIDED

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

On April 2, 2021, Claimant filed correspondence with FINRA Dispute Resolution Services in which he reflected the parties' agreement to have the case heard by only one arbitrator instead of three arbitrators. Accordingly, only one arbitrator was appointed.

On May 5, 2021, Claimant filed an Affirmation of Service with FINRA Dispute Resolution Services confirming that the customer in Occurrence Numbers 2047598 ("Customers A and B") were served with the Statement of Claim and notice of the date and time of the expungement hearing. In his Affirmation of Service, Claimant advised that the customer for Occurrence Number 1433452 ("Customer C") was deceased and, therefore, Claimant was unable to serve Customer C.

The Arbitrator conducted a recorded, telephonic hearing on May 20, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent did not participate in the expungement hearing.

Customers A and B also did not participate in the expungement hearing. The Arbitrator found that Customers A and B 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 Number 2047598, 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. Further, Claimant did not contribute to the settlement amount.

The Arbitrator noted that the dispute related to Occurrence Number 1433452 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: Claimant's Unopposed Petition for Expungement with attached Exhibit A through D (A - BrokerCheck® Report, B - Customer C's October 2006 Account Statement, C - UBS Guide to Cash Alternatives, and D - March 2007 Account Statement); Claimant's Hearing Exhibits E through U (E – Customer C's Complaint Letter, F – Customer C's UBS Denial Letter, G - Customers A and B's Options Agreement, H - Customers A and B's Yield Enhancement Strategy Questionnaire, I - Customers A and B's YES PMP Profile, J - Customers A and B's YES Slide Deck with One-Pager, K - Customers A and B's YES Historical Performance, L - Customers A and B's YES Form ADV, M - Customers A and B's YES Margin Agreement, N -

Customers A and B's YES Margin Lending Agreement, O - Customers A and B's YES Email enclosing 2-18 Marketing Deck, P - Customers A and B's YES Marc 2018 Account Statement, Q- Customers A and B's April 2018 Emails; R - Customers A and B's YES Performance Report December 2018; S - Customers A and B's Statement of Claim, T - Customers A and B's UBS Answer to Statement of Claim, U - Customers A and B's Settlement Agreement; Respondent's Statement of Answer; FINRA Arbitration Submission Agreements for Claimant and Respondent; and Claimant's Affirmation of Service with its Exhibits A and B.

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 2047598 and 1433452 from registration records maintained by the CRD for Claimant Brian Andrew Blackburn (CRD Number 4305052) with the understanding that, pursuant to Notice to Members 04-16, Claimant 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:

   This matter concerns the expungement of CRD Occurrence Numbers 1433452 and 2047598 for Associated Person ("AP") Brian A. Blackburn, CRD No. 4305052.

   On the pleadings, oral testimony and documentary evidence presented, I find that Claimant has met his burden pursuant to Rule 2080(b)(1)(A) and (C) of the Code. Although I do not include subsection (B) of such Rule as in the broadest reading, AP did assist in the sale of the securities, I find that he committed no sales-practice violation and the specific claims of the customers in both instances were related to the product and not the conduct of the AP in the sales thereof. I find the allegations in both occurrences are clearly erroneous and false.

   Occurrence Number 1433452 for Customer C

   Notwithstanding that the BrokerCheck® reported allegations actually state no wrongdoing but merely reiterate the actual process of the Auction Rate Securities ("ARS") and are stated by the customer to appear to have the necessary safety of principal being sought, the claim goes on to assert unspecified, estimated damages in excess of $5,000.00. The ARS at issue

are a form of security in which the liquidity could be affected by volatility in the market in that they may be sold in a weekly auction. However, if there are no buyers, then the auction (not the security) defaults, and the customer continues to receive interest at the maximum rate for that given security per its prospectus. ARS had a long track record as AAA-rated and secured three-fold by corporate or municipal bonds and provided a better than money market rate of return. They were secure, liquid assets under normal conditions. However, the extraordinary market instability beginning in February 2008 and leading to a credit crisis in the Fall of 2008 caused volatility that prevented successful auction sales, but without loss of principal or interest. In fact, the ARS were preferred securities which gave more security to the purchaser. The security was purchased in October 2006.

The issue is whether or not Customer C was provided information to understand the auction process (i.e., liquidity) and the impact of market volatility.

Exhibit C, UBS's Guide to Cash Alternatives at pages 5 through 7 has a very clearly stated description of the nature of the "Dutch Auction" process for the ARS and the risk of a failed auction or continuous failed auctions. The document was provided to the customer who was an attorney. That exhibit alone shows that Customer C received a proper and accurate disclosure as to the nature of the investment and liquidity possibilities and refutes the allegations in the customer's complaint. Further, Claimant testified credibly that he discussed with Customer C the investment and Customer C was very enthusiastic as to the interest rate versus what he could achieve with a money market. The investment objectives were reiterated on the monthly statements as capital appreciation with moderate risk – ARS met the criteria. The ARS had a 5.0% interest rate.

Exhibit B (October 2006) shows the ARS as a Money Market Instrument under Cash Alternatives on the monthly statements. This is very clearly set forth and distinct from the Certificates of Deposit on the following page of the statement.

October 2, 2008, Customer C requested to participate in the then UBS buy-back program for its ARS customers for a time beginning in 2008. His request was denied as Customer C had transferred his accounts on March 17, 2007, to Raymond James and was no longer a UBS customer (Exhibit D). Customer C wished to consolidate all of his securities' accounts in one firm. Claimant no longer could provide any advice to Customer C. Neither further advice nor recommendations were provided to Customer C by Claimant thereafter. For nearly eleven months Customer C continued to hold the ARS at Raymond James and never sought to sell when the auctions were successful and the market not volatile.

Customer C's complaint actually relates to the UBS firm policy not to repurchase his ARS as he had already left the firm voluntarily. The explanation in Exhibit F was within the firm's discretion and Claimant had no responsibility or liability for that decision. There are no sales-practice violations stated in the complaint at Exhibit E.

Occurrence Number 2047598 for Customers A and B

The BrokerCheck® Report allegation for the period 2017 to the date of filing the disclosure is: "Claimant's counsel alleges unsuitability and misrepresentation with respect to recommendations to invest in and hold an options overlay strategy." The strategy was UBS's Yield Enhancement Strategy ("YES") that involved the purchase and sale of S&P Index

options such that the customer did not have to put up cash to purchase but could use other accounts as pledged collateral to support the options contracts to be traded ("Mandate"). Such number was never invested and was between 15-20% of the Mandate.

The evidence shows that the YES strategy was only for use by high net worth customers of $5,000,000.00 or more each. Both customers (as husband and wife) individually met the threshold. The underlying complaint suggests that the customers had only a high school education which, on its face, suggests Customer A may not have understood the investment. However, the complaint fails to tell fully and in detail the rest of the story. Customer A was a highly successful business executive with Flour Corp., a publicly traded multinational engineering and construction firm, before becoming the President of American Equipment Company, a Flour subsidiary. In 2003, he left to be Chief Executive Officer of NationsRent, a construction equipment leasing company. Subsequently, he consulted for Standard & Poor's in the construction equipment and leasing sector. Claimant testified that as to all of his customers, Customer A was, if not the most sophisticated investor, within the top three he ever had as a client. The focus of Claimant's practice was with high net worth clients.

Customers A and B desired to replace some of the income being lost by the end of husband's Flour retirement payments with a UBS investment. Customer A signed numerous account documents reflecting high-risk tolerance; capital appreciation investment objective; risk that accepted high fluctuations in the value of assets; ten-years investment horizon; significant experience in investing; and illiquidity. These are set forth in Exhibits G (Client Qualification Form and Agreement for Options), H, I, L at Section C and D at pages 2 and 3 of 6, M and N. In essence, Customers A and B agreed to have a high-risk, aggressive, long-term and illiquid investment using the YES program provided. This was clearly stated in numerous documents signed by Customers A and B, provided to them or discussed with them.

The evidence is clear that there was no misrepresentation by Claimant as to the investment and the YES program was suitable for Customers A and B in all respects. YES had a long track-record from 2003 of success. It earned 6-8% per year and returned approximately 60% in long-term capital gains and 40% in short-term capital gains which was a tax benefit. Any losses were a direct result of unexpected and extraordinary market conditions. Claimant and Customers A and B had considerable discussions concerning YES prior to its purchase. The representations made by Claimant, the YES managers and UBS generally are so complete that I cannot find any basis for the alleged misrepresentations or unsuitability of the investment in the YES program.

It is most significant that this YES investment was not managed by Claimant but was a managed, discretionary account by a separate New York based UBS team. Claimant had no input or say as to the handling of the account once opened and Claimant testified that he was prohibited by UBS from even trying to do so. Nonetheless, Claimant conducted extensive due diligence of his own, met with the UBS New York managers for YES, and discussed extensively the YES investment with the YES team members.

Even more telling that Customers A and B were not subject to any misrepresentations or invested in any unsuitable program is that Claimant, Customers A and B and the YES team representative in New York ("Team Member") had a near hour and one-half, three-way telephone conference with slides describing all aspects of the YES program in detail. (Exhibit

J) Claimant testified that Customer A told the Team Member to bypass the slide show as he did not need the "dog and pony show." Instead, Customer A then asked a set of 11 very detailed questions about the YES program all of which the Team Member answered. The Team Member then proceeded to go through the slides not answered as to Customer A's questions. Customer A said he was good. Following the conference, Claimant continued to discuss the YES program with Customer A for another 15 minutes. The allegations in the customers' complaint and as reported on the BrokerCheck® Report are false or at least clearly erroneous.

I find that both occurrences should be expunged as the continued reporting of them on the BrokerCheck® Report and CRD serves no meaningful investor protection or regulatory value.

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

*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	=$ 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 @ $1,125.00/session			=$ 1,125.00
Hearing:	May 20, 2021	1 session	
Total Hearing Session Fee			=$ 1,125.00

The Arbitrator has assessed the entire hearing session fee to Claimant.

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

ARBITRATOR

John P. Cullem - 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

John P. Cullem **05/28/2021**

John P. Cullem
Sole Public Arbitrator

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 28, 2021
Date of Service (For FINRA Dispute Resolution Services use only)