

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

James Malcom Ugobono

Case Number: 21-00898

vs.

Respondents

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

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. Members

REPRESENTATION OF PARTIES

For Claimant James Malcom Ugobono: Isabel Torres-Sastre, Esq. and Roberto C. Quiñones-Rivera, Esq., McConnell Valdes LLC, San Juan, Puerto Rico.

For Respondents UBS Financial Services Incorporated of Puerto Rico and UBS Financial Services Inc.: Rey F. Medina Velez, Esq., UBS Financial Services Incorporated of Puerto Rico, San Juan, Puerto Rico.

CASE INFORMATION

Petition for Expungement filed on or about: April 6, 2021.

James Malcom Ugobono signed the Submission Agreement: April 6, 2021.

Response to Petition for Expungement filed by Respondents on or about: April 26, 2021.

UBS Financial Services Incorporated of Puerto Rico signed the Submission Agreement: April 26, 2021.

UBS Financial Services Inc. signed the Submission Agreement: April 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 Response to Petition for Expungement, Respondents stated that they do not oppose, and fully support, Claimant’s requests for expungement.

RELIEF REQUESTED

In the Petition for Expungement, Claimant requested expungement of Occurrence Numbers 2000093 and 2048145.

In the Response to Petition for Expungement, Respondents did not delineate a specific request.

OTHER ISSUES CONSIDERED AND DECIDED

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

On March 24, 2021, prior to the filing of the Petition for Expungement in this matter, Claimant notified the customers in Occurrence Numbers 2000093 and 2048145 ("Customers") by email of Claimant's intent to file a petition to expunge Occurrence Number 2000093 and 2048145 from his CRD records. On March 25, 2021, counsel for the Customers notified Claimant that the Customers will neither oppose, nor participate in, the expungement proceedings.

On September 29, 2021, Claimant advised that the customers in Occurrence Numbers 2000093 and 2048145 ("Customers") were served by email with the Petition for Expungement and notice of the date and time of the expungement hearing. On September 29, 2021, Claimant filed an Affidavit confirming that the Customers were served by email with the Petition for Expungement and notice of the date and time of the expungement hearing. Neither the Customers nor the Customers' counsel responded this notification.

The Arbitrator conducted a recorded, telephonic hearing on October 6, 2021, so the parties could present oral argument and evidence on Claimant's requests for expungement.

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

The Customers did not participate in the expungement. The Arbitrator found that the Customers had notice of the expungement requests 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 2000093 and 2048145, considered the amount of payments 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: Statement of Claim in each underlying action; Respondents' Statement of Answers in the underlying actions; Claimant's Petition for Expungement and exhibits thereto; Claimant's BrokerCheck® Report; Respondents' Response to Claimant's Petition for Expungement; and Claimant's hearing testimony and argument of counsel for each of the parties.

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 2000093 and 2048145 from registration records maintained by the CRD for Claimant James Malcolm Ugobono (CRD Number 4032530) with the understanding that, pursuant to Notice to Members 04-16, Claimant James Malcolm Ugobono 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:

In May of 1998, Claimant received a Bachelor of Science degree from Saint Joseph University in Philadelphia where he majored in finance and marketing. Claimant currently is employed by and registered with Respondents and has been since November 12, 2010. Claimant is registered with nine self-regulatory organizations and in six states and territories. Prior to his employment with Respondents, Claimant was registered with Santander Securities, LLC between 2001 and 2010 and Doral Securities, Inc. between 1999 and 2001.

As to Occurrence Number 2000093

In the Statement of Claim in this underlying action, the Customers alleged that Respondents and their Financial Advisors (“FA”) recommended investments concentrated in Puerto Rico securities. Claimant was not the Customers’ FA at any time material to the Customers’ purchases about which they later complained in their Statement of Claim. In fact, their last purchases at issue were from January 2009, which is many years before Claimant became their FA. The FA handling those allegedly unsuitable purchases for the Customers left Respondents’ employment in October 2015. This was a full two years after the Puerto Rico bond market collapse.

Claimant took over responsibility for the Customers’ accounts as a result of an administrative assignment after the original FA’s departure toward the end of 2015. It is

important to note that to this day, Claimant continues to serve as the FA for the Customers. After Claimant was assigned to the Customers' accounts, his only recommendations to the Customers were to sell their Puerto Rico securities. However, the Customers declined those recommendations because they needed the regular income generated by those securities. In sum, Claimant never was involved in the transactions at issue as alleged in the underlying Statement of Claim, only inheriting those accounts as a result of the original FAs leaving Respondents' employment. For the above reasons, the Arbitrator recommends that expungement be granted as to Occurrence Number 2000093 under Rule 2080(A)(B)(C).

Pursuant to FINRA Rules, because Claimant was the Customers' broker of record at the time the Statement of Claim was filed, this event was reportable on his CRD. See Rule 4530. Respondents filed an answer to the Statement of Claim denying the allegations and raising defenses. Respondents and the Customers settled this action. Claimant did not participate in settlement negotiations, was not a party to the settlement agreements, and did not contribute to the settlement payments.

As to Occurrence Number 2048145

In their Statement of Claim, the Customers alleged that Respondents recommended unsuitable investments concentrated in Puerto Rico closed-end funds ("CEF"). This investment recommendation resulted in the Customers sustaining a loss in value to their accounts. The Customers named a different broker as their FA who handled their accounts at all times material to the Statement of Claim. The Customers never described Claimant as the FA who made the allegedly unsuitable investment recommendations. Respondents administratively assigned the Customers' accounts to Claimant in October 2015, after the original FA left Respondents. This assignment occurred more than two years after the Puerto Rico bond market collapse. Once he became their FA, Claimant recommended that the Customers invest in U.S. Securities, the Customers agreed and, in fact, made several purchases of U.S. municipal and income funds between April 2015 and May 2017. In sum, Claimant never made any recommendations, nor did he have any communications with the Customers, at any time material to the allegations set forth in their Statement of Claim. Accordingly, the Arbitrator recommends that this occurrence be expunged from Claimant's CRD record.

Pursuant to FINRA Rules, because Claimant was the Customers' broker of record at the time the Statement of Claim was filed, this event was reportable on his CRD. See Rule 4530. Respondents filed an answer to the Statement of Claim denying the allegations and raising defenses. Respondents and the Customers settled this action. Respondents settled this action solely for business purposes. Claimant did not participate in settlement negotiations, was not a party to the settlement agreement, and did not contribute to the settlement payment.

The Arbitrator recommends that Occurrence Number 2048145 on Claimant's CRD be expunged under FINRA Rule 2080(A)(B)(C).

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:

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 parties, Respondents are each assessed the following:

Member Surcharge =\$ 1,900.00

Member Process Fee =\$ 3,750.00

Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

September 28, 2021, postponement requested by Claimant and Respondents =\$ 1,125.00

Total Postponement Fees =\$ 1,125.00

The Arbitrator has assessed \$562.50 of the postponement fees to Claimant.

The Arbitrator has assessed \$562.50 of the postponement fees jointly and severally to Respondents.

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: July 26, 2021 1 session

One (1) hearing session on expungement request @ \$1,125.00/session =\$ 1,125.00

Hearing: October 6, 2021 1 session

Total Hearing Session Fees =\$ 2,250.00

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

10/20/2021

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.

October 21, 2021

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