

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Xavier A. Aguayo

Case Number: 21-00952

vs.

Respondent
UBS Financial Services Incorporated of Puerto Rico

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. Member

REPRESENTATION OF PARTIES

For Claimant Xavier A. Aguayo: Russell Del Toro-Parra, III, Esq. and Linette Figueroa-Torres, Esq., Toro Colon Mullet, PSC, San Juan, Puerto Rico.

For Respondent UBS Financial Services Incorporated of Puerto Rico: 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: April 9, 2021.
Xavier A. Aguayo signed the Submission Agreement: April 9, 2021.

Response to Petition for Expungement filed by Respondent on or about: May 25 2021.
UBS Financial Services Incorporated of Puerto Rico signed the Submission Agreement: May 25, 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, Respondent supported Claimant’s expungement request and agreed that a finding should be entered in favor of Claimant for the recommendation

of expungement of the underlying arbitrations from his CRD record. Respondent further stated that it did not intend to participate in this proceeding.

RELIEF REQUESTED

In the Petition for Expungement, Claimant requested expungement of Occurrence Numbers 1886628, 1844800, 1888744, 1960353, 1811199 and 2016203.

In the Response to the Petition for Expungement, Respondent did not delineate a relief request.

OTHER ISSUES CONSIDERED AND DECIDED

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

Pursuant to the parties' May 26, 2021 stipulation, this matter was decided by a sole arbitrator.

On December 22, 2021, Claimant advised that the customers in Occurrence Numbers 1886628, 1844800, 1888744, 1960353, 1811199 and 2016203 ("Customers") were served with the Statement of Claim and notice of the date and time of the expungement hearing. With the exception of the Customers in Occurrence Number 1960353 (who did not respond to the notice), all of the other Customers indicated they would not be participating in the hearing.

The Arbitrator conducted a recorded, telephonic hearing on January 20, 2022, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing and, as stated in the Statement of Answer, supported the request for expungement.

None of the Customers participated 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 occurrences in the CRD.

The Arbitrator also reviewed the settlement documentation related to Occurrence Numbers 1886628, 1844800, 1888744, 1960353, 1811199 and 2016203, considered the amount of payment 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: Claimant's BrokerCheck Report®, the underlying arbitration complaints and settlement agreements in connection with each Occurrence considered by the Arbitrator, the Customers' account statements, and investment proposals made for some of the Customers.

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. Pursuant to the agreement of the parties, Respondent is liable for and shall reimburse Claimant the sum of \$375.00, representing the non-refundable portion of the claim filing fee previously paid by Claimant to FINRA Dispute Resolution Services.
2. The Arbitrator recommends the expungement of all references to Occurrence Numbers 1886628, 1844800, 1888744, 1960353, 1811199 and 2016203 from registration records maintained by the CRD for Claimant Xavier A. Aguayo (CRD Number 2926408) with the understanding that, pursuant to Notice to Members 04-16, Claimant Xavier A. Aguayo 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 for Occurrence Numbers 1886628, 1844800, 1888744, 1960353, 1811199 and 2016203:

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 finding based on the following reasons:

As an overview, Claimant testified that as a financial advisor ("FA"), he directs his customers to hold a diversified portfolio limiting exposure in any single concrete area. The 2013 collapse of the Puerto Rico ("PR") bond market coupled with the failure of customers to diversify (following his recommendation), triggers many, if not all of the Occurrences for which Claimant validly seeks expungement here. More specifically:

Occurrence Number 1886628

Though a grand total of 13 Customers brought action against Claimant, only two of these Customers had any relationship with Claimant. Investments which served as the basis of the action against Claimant were purchased by an associated FA. Claimant "inherited" these Customers after the FA left the industry. Claimant made no recommendations to the customers.

Occurrence Number 1844800

Claimant "inherited" these Customers from their previous FA. Claimant asked these Customers to consider diversification but they refused to make changes to their portfolio, ultimately resulting in losses after the 2013 collapse.

Occurrence Number 1888744

This Customer was an entity created by a lottery winner who at one point held 98% of her portfolio in PR securities. The account was transferred from a prior brokerage with which this Customer was dissatisfied. The principal of this Customer was not a sophisticated investor and refused to diversify the portfolio. Alternative portfolio investments were, for the most part, refused.

Occurrence Number 1960353

Claimant was not a named party in the underlying action. This was another "inherited" account from an FA leaving Respondent. At one point, the total portfolio was in one PR closed-end fund. The account was profitable upon Claimant's rebalancing of some of the portfolio but this Customer refused most, if not all, non-PR products.

Occurrence Number 1811199

These Customers were members of a family that were familiar with Claimant. The daughter's account was (upon following the recommendation of Claimant) well diversified. Almost half of the family holdings were ultimately diversified away from PR-based securities. It should be noted that Claimant was, for a portion of these accounts, the secondary FA. Claimant reported that the accounts were net profitable.

Occurrence Number 2016203

This Customer remains a client of Claimant and shows a net profit from the investment strategy. This Customer followed Claimant's recommendation to diversify and losses in 2013 were therefore tempered by diversification.

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(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) pre-hearing session with the Arbitrator @ \$1,125.00/session = \$1,125.00

Pre-Hearing Conference: August 9, 2021	1 session	
Two (2) hearing sessions on expungement request @ \$1,125.00/session		=\$ 2,250.00
Hearing: January 20, 2022	2 sessions	
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Total Hearing Session Fees		=\$ 3,375.00

Pursuant to the Agreement of the parties, the Arbitrator has assessed the total hearing session fees to Respondent.

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

ARBITRATOR

Louis David Huss

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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

Louis David Huss

Louis David Huss
Sole Public Arbitrator

01/26/2022

Signature Date

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January 26, 2022

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