

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Xavier A. Aguayo Diaz

Case Number: 21-00953

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 Diaz: Linette Figueroa-Torres, Esq. and Russell del Toro, III, Esq., Toro Colon Mullet PSC, San Juan, Puerto Rico.

For Respondent UBS Financial Services Incorporated of Puerto Rico: 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 9, 2021.

Xavier A. Aguayo Diaz 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 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 stated that it supports Claimant’s expungement request and does not intend to participate in the final hearing in this matter.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers 1967486,

1766356, 1987401 and 1993157 from his CRD records.

In the Statement of Answer, Respondent requested that the Arbitrator make a finding in favor of Claimant and recommend expungement of Claimant's CRD records.

OTHER ISSUES CONSIDERED AND DECIDED

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

On October 7, 2021, Claimant advised that respective counsel for the underlying customers in Occurrence Numbers 1967486, 1766356, 1987401 and 1993157 ("Customers") were served via email and certified mail on April 13, 2021, and via email and FedEx on September 30, 2021, with the Petition for Expungement and notice of their right to participate in the hearing.

On April 14, 2021, counsel for the underlying customer in Occurrence Number 1967486 confirmed receipt of Claimant's notice and advised Claimant that this customer would not be participating in this proceeding.

On September 30, 2021, counsel for the underlying customers in Occurrence Number 1766356 confirmed receipt of Claimant's notice and advised Claimant that these customers would not be participating in this proceeding.

On September 30, 2021, counsel for the underlying customer in Occurrence Number in Occurrence Number 1993157 confirmed receipt of Claimant's notice.

On October 1, 2021, counsel for the underlying customer in Occurrence Number 1967486 reconfirmed receipt of Claimant's notice and reconfirmed that this customer would not be participating in this proceeding.

The underlying customer in Occurrence Number 1987401 did not confirm receipt of Claimant's notice but the automated tracking history of the certified mailing reflects delivery on April 15, 2021 at 4:25 pm in San Juan, Puerto Rico.

The Arbitrator conducted a recorded, telephonic hearing on October 20 2021, 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.

The Customers did not participate 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 Number 1967486, 1766356, 1987401 and 1993157, 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 testimony, which thoroughly explained his philosophy of portfolio diversification and the general reluctance of Puerto Rico-based clients to make changes (usually due to tax purposes); the investment presentations made to each Customer; the four Customer complaints; Respondent's Answer to each complaint; the settlement documents; and Claimant's BrokerCheck® Report.

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 1967486, 1766356, 1987401 and 1993157 from registration records maintained by the CRD for Claimant Xavier A. Aguayo Diaz (CRD Number 2926408) with the understanding that, pursuant to Notice to Members 04-16, Claimant Xavier A. Aguayo Diaz 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:

Occurrence Number 1967486

The Customer made numerous investments in Puerto Rico ("PR") securities prior to Claimant's involvement with this Customer. Claimant recommended diversification (and offered strategies) from an overly concentrated PR securities portfolio. Customer failed to follow Claimant's recommendation with resultant loss.

Occurrence Number 1766356

The Customers followed Claimant from Claimant's prior brokerage firm. Once again, the Customers failed to follow Claimant's recommendation for diversification from certain PR securities. When the PR bond market collapsed, the Customers suffered resultant losses as to PR bonds. However, the evidence presented indicates that the account was net profitable for the Customers.

Occurrence Number 1987401

A family friend of Claimant, the Customer failed to follow Claimant's recommendation to reallocate fully away from an overly concentrated annuity and PR bond fund portfolio, though some of the recommendations were followed (with holdings with better credit quality). The account was profitable.

Occurrence Number 1993157

Claimant inherited this Customer from prior financial advisors who had left the firm. Claimant made recommendations in Customer's IRA account to diversify and further offered a more holistic investment plan, but the Customer failed to completely follow Claimant's recommendations and advice.

All Occurrence Numbers

Claimant's testimony thoroughly explained his philosophy of portfolio diversification and the general reluctance of PR-based clients to make changes (usually due to tax purposes). In each matter, Claimant took no part in the negotiated settlement with Respondent and made no contribution towards that financial settlement. The underlying theme of the four matters is the Customers' unwillingness to diversify their respective portfolios despite Claimant's recommendation to do so. In some of the matters above, the Customer had net profits. In all of the matters above, Respondent settled for far less than the initial demands made against Respondent.

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) pre-hearing session with a single Arbitrator @ 1,125.00/session = \$ 1,125.00
Pre-Hearing Conference: August 3, 2021 1 session

One (1) hearing session on expungement request @ \$1,125.00/session	= \$ 1,125.00
Hearing: October 20, 2021 1 session	
<hr/> Total Hearing Session Fees	<hr/> = \$ 2,250.00

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

10/26/2021

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 26, 2021

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