

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Donald R. Jackson

Case Number: 21-00972

vs.

Respondent
UBS Financial Services Inc.

Hearing Site: Oklahoma City, Oklahoma

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 Donald R. Jackson (“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: April 13, 2021.
Claimant signed the Submission Agreement: April 13, 2021.

Statement of Answer filed on or about: April 26, 2021.
Respondent 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 Statement of Answer, Respondent did not oppose Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Number 2057101.

In the Statement of Answer, Respondent requested that all costs and fees 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 27, 2021, Claimant advised that the parties agreed to proceed with a single arbitrator.

On May 21, 2021, Claimant advised that the customer in Occurrence Number 2057101 (“Customer”) was served with the Statement of Claim and notice of the date and time of the expungement hearing (“Notice”). Claimant also filed a copy of the FedEx proof-of-delivery for the Notice.

The Arbitrator conducted a recorded, telephonic hearing on June 16, 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, did not oppose the request for expungement.

The Customer and his wife also participated in the expungement hearing and opposed the expungement request.

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 also reviewed the settlement documentation related to Occurrence Number 2057101, 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 and that Claimant did not contribute to the settlement amount.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant’s testimony, the Customer’s testimony, the Customer’s wife’s testimony, and Exhibits C-D and F.

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 2057101 from registration records maintained by the CRD for Claimant Donald Ray Jackson (CRD Number 2463376) with the understanding that, pursuant to Notice to Members 04-16, Claimant Donald Ray Jackson 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; and

The claim, allegation, or information is false.

The Arbitrator has made the above Rule 2080 findings based on the following reasons:

A preponderance of the evidence presented demonstrated that Claimant considered and discussed with the Customer the potential downsides of rolling his entire 401k into his IRA account, early in their relationship. There were conversations over more than a year about the Customer’s retirement date, which shifted from time to time, and his wishes. The evidence included System Notes (“Notes”) documenting conversations from the point of view of UBS personnel. The Notes documented discussions in May 2017, June 2017, May 2018, August 2018, and September 2018. Evidence was also presented about the effect of the Customer’s wife’s retirement on their needs and plans as a couple.

The Customer testified repeatedly that he told Claimant that he did not understand the rollover process and trusted him to “do right” by him. The Customer signed rollover documents, placing all of his 401k funds into the IRA account. The Account Information page of the Customer’s IRA Agreement contained an affirmation that the Customer had no short-term liquidity needs and that he made the rollover decision independently. The Customer rightly and honorably volunteered that he signed the documents.

Subsequently, the Customer communicated alarm that the first check from the 401k was less than the full amount of his 401k. The explanation was that the funding was coming from two sources, which is why there were two checks. It was not until a short time later that there was any discussion regarding a mistake or error in rolling over the entire 401k funds into the IRA.

This is not a case where Claimant and/or the witnesses were not credible. I found all who testified to be sincere and firm in their convictions. The benefit of hindsight often suggests that communication could have been different or better in many ways. I do not express judgment about whether Claimant and/or the Customer could have communicated differently. The narrow legal question is whether the Disclosure Event should be expunged. Considering the balance of the evidence and the equities of this situation, I find that the regulatory objective of protecting the investing public would not be advanced by leaving the complaint information in place on Claimant’s registration records.

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) hearing session on expungement request @ \$450.00/session = \$ 450.00
Hearing: June 16, 2021 1 session

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

Jeffrey R. Jury

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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

Jeffrey R. Jury

Jeffrey R. Jury
Sole Public Arbitrator

06/29/2021

Signature Date

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June 29, 2021

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