

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Francisco Javier Landivar

Case Number: 21-01049

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 Francisco Javier Landivar: Leslie Flores, Esq. and Roberto C. Quiñones-Rivera, Esq., McConnell Valdés, LLC, 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

Statement of Claim filed on or about: April 21, 2021.

Francisco Javier Landivar signed the Submission Agreement: April 21, 2021.

Statement of Answer filed by Respondent on or about: April 26, 2021.

UBS Financial Services Incorporated of Puerto Rico 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 supported Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested an order recommending that all references to Occurrence Number 1997237 be expunged from Claimant's CRD record.

In the Statement of Answer, Respondent requested that a finding should be entered by the presiding Arbitrator in favor of Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

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

On September 15, 2021, Claimant advised that the customers in Occurrence Number 1997237 ("Customers") were served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded, telephonic hearing on October 4, 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 occurrence in the CRD.

The Arbitrator also reviewed the settlement documentation related to Occurrence Number 1997237, 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: the Statement of Claim in the underlying case, Respondent's Answer in the underlying case, the Statement of Claim, Hearing Exhibits attached to the Statement of Claim (A through K), Claimant's September 15, 2021 Proof of Service to the Customers in the underlying case, Claimant's current BrokerCheck® Report, Respondent's Statement of Answer, Claimant's Hearing testimony, and argument of counsel.

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 1997237 from registration records maintained by the CRD for Claimant Francisco Javier Landivar (CRD Number 2784555) with the understanding that, pursuant to Notice to Members 04-16, Claimant Francisco Javier Landivar 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:

Claimant’s Background and Employment:

In 1996, Claimant graduated from American University in Washington D.C. with a Bachelor of Arts degree in finance and international business. In 2004 he obtained a Master of Business Administration degree from Northwestern University in the areas of real estate and finance. Claimant worked for Banco Popular of Puerto Rico for a number of years as well as PaineWebber, some of that work being in Chicago, Illinois. In September of 2005, Claimant moved his family to Puerto Rico where he began working with Respondent in its San Juan office. Claimant is registered as a securities broker with nine-self regulatory organizations in twenty U.S. States and territories. Claimant has been qualified as a financial advisor (“FA”) with Respondent from September of 2005 to the present.

Occurrence Number 1997237 (Case Number 18-02980):

In the original Statement of Claim, the Customers wrongly referred to Claimant as their FA but realized later that allegation was erroneous. Accordingly, the Customers filed an Amended Statement of Claim clarifying that it was another FA who handled their accounts at all times material to the underlying case. However, 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 FINRA Rule 4530. Respondents in the underlying case filed a Statement of Answer to the Amended Statement of Claim denying the allegations and raising defenses. The Customers and Respondents settled the underlying case. Claimant did not participate in settlement negotiations, was not a party to the settlement agreement, and did not contribute to the settlement payment.

There were three Customers who filed the original Statement of Claim. Another FA (“Original FA”) was the FA for the Customers at the inception of their various accounts. Some of the

accounts were opened as early as July of 1993. On February 28, 1996, two of the Customers made their first purchase of a Puerto Rico closed-end fund (“CEF”). These Customers (“Customer A” and “Customer B”) made additional CEF purchases, bought preferred shares of local banking institution Popular, Inc., and made other investments. In November of 2012, Customer A opened additional accounts with other family members with the Original FA. These newer accounts also held CEFs in their portfolios, and they performed well until mid-2013. At the end of the summer of 2013, there was a precipitous decline in the Puerto Rico bond market which caused significant losses in the value of those investments.

After twenty-three (23) years working in the securities industry, in the summer of 2014 the Original FA decided to retire. To ensure a smooth transfer of responsibilities for these accounts, he brought in Claimant to be part of a “mutual support agreement.” Under that agreement, the Original FA would continue servicing his accounts with Claimant providing support as needed. As a result of this arrangement, in September of 2014, Claimant’s name began to appear on the Customers’ account statements along with the Original FA. In June of 2017, the Original FA formally retired, and Claimant became the sole FA on the accounts.

The Customers filed the underlying case on August 23, 2018, more than five (5) years after the Puerto Rico bond market collapse. Again, in the original Statement of Claim, the Customers erroneously named Claimant as having served as the FA who made unsuitable investment recommendations. Because this was a clear factual error, the Customers agreed to file an Amended Statement of Claim and remove Claimant’s name as the FA involved in recommending allegedly unsuitable investments. It was only after this amendment to the Statement of Claim that Respondent was required to file an Answer. The Amended Statement of Claim made clear that Claimant was not involved in the transactions and investments at issue.

It also should be highlighted that prior to Claimant becoming the FA for the Customers, Claimant never had met or spoken with them. However, after becoming their FA, from that point forward Claimant did meet with the Customers for periodic account reviews. Claimant never made any recommendations for the investments at issue in the underlying case. In summary, it was only the Original FA who made all of the investment recommendations at issue in the underlying case, and Claimant never had any communications with the Customers during the relevant period. In light of all of the undisputed facts, the Arbitrator recommends that the Occurrence Number 1997237 be expunged from Claimant’s CRD record pursuant to Rules 2080(b)(1)(A), (B), and (C).

Conclusion:

The Arbitrator recommends that Occurrence Number 1997237 on Claimant’s CRD be expunged under FINRA Rules 2080(b)(1)(A), (B), and (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 = \$ 1,600.00

**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 that employed the associated person at the time of the event giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge = \$ 2,000.00

Member Process Fee = \$ 3,850.00

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 @ \$1,150.00/session = \$ 1,150.00
Pre-Hearing Conference: August 16, 2021 1 session

One (1) hearing session on expungement request @ \$1,150.00/session = \$ 1,150.00
Hearing: October 4, 2021 1 session

Total Hearing Session Fees = \$ 2,300.00

The Arbitrator has assessed the total hearing session fees to Respondent, per the Parties' agreement.

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

10/15/2021

Signature Date

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October 15, 2021

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