

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

David James Trogan, Jr.

Case Number: 21-01126

vs.

Respondents

Merrill Lynch Pierce Fenner & Smith Inc.
UBS Financial Services Inc.

Hearing Site: Los Angeles, California

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 David James Trogan, Jr. (“Claimant”): Chelsea Masters, Esq., HLBS Law, Westminster, Colorado.

For Respondent Merrill Lynch Pierce Fenner & Smith Inc. (“Merrill Lynch”): Patrick Mulligan, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

For Respondent UBS Financial Services Inc. (“UBS”): John Murphy, Esq., John Murphy & Associates, P.C., New York, New York.

Hereinafter, Merrill Lynch and UBS are collectively referred to as “Respondents”.

CASE INFORMATION

Statement of Claim filed on or about: April 29, 2021.

Claimant signed the Submission Agreement: April 29, 2021.

Statement of Answer filed by Merrill Lynch on or about: June 28, 2021.

Merrill Lynch signed the Submission Agreement: June 28, 2021.

Statement of Answer filed by UBS on or about: June 15, 2021.

UBS signed the Submission Agreement: May 13, 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 its Statement of Answer, Merrill Lynch took no position on Claimant’s expungement request and asserted various affirmative defenses.

In its Statement of Answer, UBS did not oppose Claimant’s expungement request and denied any allegations of wrongdoing made in the Statement of Claim.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of Occurrence Numbers 1106359 and 1468088 from his CRD records, pursuant to FINRA Rule 2080(b)(1)(A) as the claims, allegations, or information are factually impossible or clearly erroneous;
2. Expungement of Occurrence Numbers 1106359 and 1468088 from his CRD records, pursuant to FINRA Rule 2080(b)(1)(B) as Claimant was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds;
3. Expungement of Occurrence Numbers 1106359 and 1468088 from his CRD records, pursuant to FINRA Rule 2080(b)(1)(C) as the claims, allegations or information are false;
4. Deletion of all Disclosure Reporting Pages accompanying Occurrence Numbers 1106359 and 1468088, in their entirety; and
5. Any and all other relief that the Arbitrator deems just and equitable

In its Statement of Answer, Merrill Lynch made to specific request for relief.

In the Statement of Answer, UBS requested all costs and fees associated with this claim be assessed solely against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

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

On July 8, 2021, the parties agreed to proceed with a single arbitrator on this matter.

On December 22, 2021, Claimant filed an obituary and the death record from Lexis Nexis database reflecting that the customer in Occurrence Number 1468088 (“Mr. T”) is deceased and therefore Claimant was unable to serve the Statement of Claim and notice of the date and time of the expungement hearing.

On December 22, 2021, Claimant filed an affidavit stating that despite diligent efforts, Claimant was unable to obtain information needed to serve the customer in Occurrence Number 1106359 (“Mr. G”) with the Statement of Claim and notice of the date and time of the expungement hearing. Claimant also advised that Mr. G’s information, including the last known address, was not in his possession and Merrill Lynch was unable to provide any information to assist with the research. Claimant further advised that he has exhausted all avenues from which to obtain

information needed to serve Mr. G. The Arbitrator found sufficient efforts had been made to serve Mr. G.

The Arbitrator conducted a recorded, telephonic hearing on January 18, 2022, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondents did not participate in the expungement hearing and, as stated in their Statement of Answers, did not oppose the request for expungement.

Mr. G did not participate in the expungement 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 noted that there was no individual settlement agreement related to Occurrence Number 1468088 as the complaint was related to the illiquidity of the Customer's Auction Rate Securities ("ARS") and the complaint was resolved as part of a global settlement between UBS and securities regulators. The Arbitrator noted that Claimant was not involved in the global settlement agreement and did not contribute to the settlement amount, which was a repurchase of the ARS at par value. The Arbitrator also noted that the settlement was not conditioned on any party to the settlement not opposing the request for expungement.

The Arbitrator noted that the dispute related to Occurrence Number 1106359 was not settled and, therefore, there was no settlement document to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the Statement of Claim; the Statement of Answers; Claimant's exhibits; Claimant's BrokerCheck® Report; and Claimant's testimony.

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 1106359 and 1468088 from registration records maintained by the CRD for Claimant David James Trogan Jr. (CRD Number 2291468) with the understanding that, pursuant to Notice to Members 04-16, Claimant David James Trogan Jr. 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 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:

Occurrence Number 1106359

Claimant was not Mr. G's financial advisor and did not advise or recommend the purchase of any securities or investment products at the center of the complaint. Claimant's partner (Mr. S) was Mr. G's financial advisor and Mr. G was Mr. S' client prior to the partnership formation between Claimant and Mr. S. Testimony indicated Claimant was not involved in advising Mr. G.

Occurrence Number 1468088

The underlying complaint was filed with UBS regarding the illiquidity of ARS that occurred in early 2008. Mr. T was an experienced investor who had experience investing in ARS investments. Mr. T's complaint centered around the illiquidity that occurred and not the particular investment product. UBS repurchased Mr. T's ARS investments as part of a Global Repurchase Agreement that occurred later in 2008. Mr. T remained a client of Claimant until Mr. T died. Mr. T's complaint did not allege any wrongdoing by Claimant. Claimant was not involved in the global repurchase offered by UBS for the subject ARS investment products and Claimant was not asked to financially participate in the repurchase offer.

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:

Initial Claim 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(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 = \$ 2,000.00
Member Process Fee = \$ 3,850.00

ARBITRATOR

George L. Tindall

-

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

George L. Tindall

George L. Tindall
Sole Public Arbitrator

01/26/2022

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.

January 27, 2022

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