

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Gregory A. Shanaphy

Case Number: 21-01539

vs.

Respondent
UBS Financial Services Inc.

Hearing Site: New York, New York

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

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Gregory A. Shanaphy: David I. Hantman, Esq., Bressler, Amery & Ross, P.C., New York, New York.

For Respondent UBS Financial Services Inc.: Omar Perez, UBS Business Solutions US LLC, Nashville, Tennessee.

CASE INFORMATION

Statement of Claim filed on or about: June 17, 2021.

Gregory A. Shanaphy signed the Submission Agreement: June 16, 2021.

Statement of Answer filed by Respondent on or about: June 25, 2021.

UBS Financial Services Inc. signed the Submission Agreement: June 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 did not oppose Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Number 2052929.

In the Statement of Answer, Respondent requested that all costs and fees associated with the 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.

The parties agreed to proceed with a single arbitrator for this matter, pursuant to Rule 13401(c) of the Code of Arbitration Procedure ("Code").

On July 14, 2021, Claimant filed an Affirmation of Service confirming that the customers were served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded hearing by videoconference on August 3, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent did not participate in the expungement hearing and, as stated in the Statement of Answer, did not oppose the request for expungement.

The customers also 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 noted that the dispute related to Occurrence Number 2052929 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 customers' Statement of Claim only against Respondent in the underlying complaint; the customers' counsel's email withdrawing their claim with prejudice and without any payment; other 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 Number 2052929 from registration records maintained by the CRD for Claimant Gregory A. Shanaphy (CRD Number 3127757) with the understanding that, pursuant to Notice to Members 04-16, Claimant Gregory A. Shanaphy 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, 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; and the claim, allegation, or information is false.

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

The Arbitrator determined that the allegation or information made by the customers against Respondent, which by implication involved Claimant as the customers' broker, was not only 1) clearly erroneous; but also 2) Claimant was not involved in any alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and 3) the allegations made were false. Thus, the customers' claims were impossible as charged. This finding was corroborated by the customers withdrawing their claim with prejudice and without payment.

The customers' complaint is clearly erroneous because the customers separately employed a money manager for their business, who reviewed the recommendation and concurred with the selection of the equities, mutual funds, Exchange Trade Funds ("ETFs"), and fixed income investments that Claimant and his team proposed.

The customers' complaint that Claimant took improper action in their account is false because at a moment that the market took a minor correction, against any recommendation that Claimant would have made, the customers instructed members of Claimant's team to liquidate their holdings, which they did during Claimant's absence from the office. In a subsequent telephone call, the customers explained to Claimant that they decided to move their accounts to another broker firm where their daughter had recently started working. Thus, Claimant was not involved in any improper conduct with regards to any investment-related sales practice or any other misconduct.

Claimant testified that the allegations against him were impossible and false because although Claimant had discretionary authority over the customers' account, every transaction was approved in advance by the customers and their money manager.

Each of these three bases for expungement is reinforced by the customers withdrawing their complaint against Respondent (no claim against Claimant) with prejudice.

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
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**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 UBS Financial Services Inc. 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) hearing session on expungement request @ \$1,150.00/session	=\$ 1,150.00
Hearing: August 3, 2021 1 session	

Total Hearing Session Fees	=\$ 1,150.00
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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

Gerald M. Levine

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Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

Arbitrator's Signature

Gerald M. Levine

Gerald M. Levine
Sole Public Arbitrator

08/12/2021

Signature Date

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August 12, 2021

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