

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Jose David Mendez Perez

Case Number: 21-01540

vs.

Respondents

UBS Financial Services Incorporated of Puerto Rico
UBS Financial Services, Inc.

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. Members

REPRESENTATION OF PARTIES

For Claimant Jose David Mendez Perez: Isabel Torres-Sastre, Esq. and Roberto C. Quiñones-Rivera, Esq., McConnell Valdés LLC, San Juan, Puerto Rico.

For Respondents UBS Financial Services Incorporated of Puerto Rico (“UBSPR”) and UBS Financial Services, Inc. (“UBS”): Rey F. Medina Velez, Esq., UBSPR, San Juan, Puerto Rico.

CASE INFORMATION

Petition for Expungement filed on or about: June 17, 2021.

Jose David Mendez Perez signed the Submission Agreement: June 16, 2021.

Response to Petition for Expungement filed by Respondents on or about: July 7, 2021.

UBSPR signed the Submission Agreement: July 7, 2021.

UBS signed the Submission Agreement: July 7, 2021.

CASE SUMMARY

In the Petition for Expungement, Claimant asserted a claim seeking expungement of customer dispute information from registration records maintained by the Central Registration Depository (“CRD”).

In the Response to Petition for Expungement, Respondents stated that they fully supported Claimant’s request for expungement.

RELIEF REQUESTED

In the Petition for Expungement, Claimant requested expungement of Occurrence Numbers 1949943, 1958712, 1971060, 1974928, 1986646, 1986647, 2007030, 2019633 and 2041930 from his CRD records.

In the Response to Petition for Expungement, Respondents did not delineate a relief request.

OTHER ISSUES CONSIDERED AND DECIDED

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

On August 24, 2021, the parties filed a stipulation to proceed with a single arbitrator in this matter.

On February 24, 2022, Claimant filed a Motion Submitting Proof of Service to Claimants in Underlying Actions and a Declaration Under Penalty of Perjury of Isabel Torres-Sastre, both reflecting that on February 18, 2022, respective counsel for the customers in Occurrence Numbers 1949943, 1958712, 1971060, 1974928, 1986646, 1986647, 2007030, 2019633 and 2041930 ("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 March 16, 2022, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondents participated in the expungement hearing and, as stated in the Response to Petition for Expungement, 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 Numbers 1949943, 1958712, 1971060, 1974928, 1986646, 1986647, 2007030, 2019633 and 2041930, 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: the sworn testimony of Claimant and all of the various exhibits, including the following documents: Exhibits B-J and Exhibit O. Exhibit O was particularly instructive as it evidences the Puerto Rican entity COSSEC's admission that the problem with investments made by Cooperativas was its own Regulation 7051.

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 1949943, 1958712, 1971060, 1974928, 1986646, 1986647, 2007030, 2019633 and 2041930 from registration records maintained by the CRD for Claimant Jose David Mendez Perez (CRD Number 2945273) with the understanding that, pursuant to Notice to Members 04-16, Claimant Jose David Mendez Perez 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 finding of fact with respect to all of the Occurrence Numbers:

The claim, allegation, or information is factually impossible or clearly erroneous.

The Arbitrator has made the above Rule 2080 finding for all Occurrences based on the following reasons:

The Customers in the underlying cases were Puerto Rican "Cooperativas", which are credit unions subject to regulation by a Puerto Rican entity known as "COSSEC". These various Cooperativas complained in the underlying cases about the alleged unsuitability and overconcentration in Puerto Rican ("PR") bonds. These claims, especially when applied as against Claimant, were baseless and ignored several key facts. First, most of the losses sustained by the Cooperativas were sustained in late 2013 when the PR bond market crashed, and Claimant didn't become the Cooperativas' financial advisor ("FA") until February 2018. Second, Claimant did not make recommendations that the Cooperativas purchase any of the PR bonds. Third, each Cooperativa had an independent board of directors that made its respective investment decisions to purchase the PR bonds. Fourth, the concentration in PR bonds was a direct and proximate result of Puerto Rican laws and regulations. For example, and without limitation, pursuant to 7 L.P.R.A. section 1362(c)(g), if a PR bond and a US bond provide the same yield, a Cooperativa must give purchase priority to the PR bond. In fact, even COSSEC admitted that the lack of diversification problems sustained by the Cooperativas in their PR bond purchases were caused by Regulation 7051. Consistent with Puerto Rico's enacted incentives to support the local economy by encouraging Puerto Rican residents and entities like the Cooperativas to invest in Puerto Rican investments, regulatory guidelines required prioritizing Puerto Rican securities over equivalent non-Puerto Rican securities, and limited Cooperativas' non-Puerto Rican investment choices to substantially lower yielding securities. The various Cooperativas were clearly pressured by the Puerto Rican government and COSSEC to purchase PR bonds and Claimant should not be penalized; therefore, expungement is appropriate here. Apparently,

the Cooperativas agreed, as the underlying cases were settled for miniscule sums when compared to the alleged losses complained about by them in the underlying cases.

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 UBS and UBSPR are each assessed the following:

Member Surcharge = \$ 2,000.00

Member Process Fee = \$ 3,850.00

Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

December 7 and 9, 2021, postponement requested by parties = \$ 1,150.00

Total Postponement Fees = \$ 1,150.00

The Arbitrator has assessed the total postponement fees jointly and severally to Respondents.

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:

Two (2) pre-hearing sessions @ \$1,150.00/session = \$ 2,300.00

Pre-hearing Conferences: October 19, 2021 1 session

January 6, 2022 1 session

One (1) hearing session on expungement request @ \$1,150.00/session = \$ 1,150.00

Hearing: March 16, 2022 1 session

Total Hearing Session Fees = \$ 3,450.00

Pursuant to the agreement of the parties, the Arbitrator has assessed the total hearing session fees jointly and severally to Respondents.

All balances are payable to FINRA Dispute Resolution Services and are due upon receipt.

ARBITRATOR

Christopher J. Klein

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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

Christopher J. Klein

Christopher J. Klein
Sole Public Arbitrator

03/18/2022

Signature Date

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March 18, 2022

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