

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
David L. Rojas

Case Number: 21-01816

vs.

Respondents
UBS Financial Services Incorporated of Puerto Rico
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 David L. Rojas: Sonia Margarita Lopez del Valle, Esq. and Roberto C. Quiñones, Esq., McConnell Valdes LLC, San Juan, Puerto Rico.

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

CASE INFORMATION

Petition for Expungement filed on or about: July 16, 2021.
David L. Rojas signed the Submission Agreement: July 15, 2021.

Statement of Answer filed by Respondents on or about: August 2, 2021.
UBS Financial Services Incorporated of Puerto Rico signed the Submission Agreement: August 2, 2021.
UBS Financial Services Inc. signed the Submission Agreement: August 2, 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 Statement of Answer, Respondents asserted that Claimant's expungement request is not opposed.

RELIEF REQUESTED

In the Petition for Expungement, Claimant requested expungement of Occurrence Number 1895566.

In the Statement of Answer, Respondents requested that a finding should be entered by the 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 February 7, 2022, Claimant advised that the customers in Occurrence Number 1895566 ("Customers") were served with the Petition for Expungement and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded, telephonic hearing on February 17, 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 Statement of Answer, did not oppose 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 1895566, 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 Petition for Expungement; Respondent's Answer to the Petition for Expungement; exhibits 1-14 attached to Claimant's Petition for Expungement; Claimant's supplemental exhibits 1-19; Claimant's testimony at the hearing; and argument of Claimant's 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 1895566 from registration records maintained by the CRD for Claimant David L. Rojas (CRD Number 3139380) with the understanding that, pursuant to Notice to Members 04-16, Claimant David L. Rojas 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 claim, allegation, or information is false.

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

In the underlying Statement of Claim filed in their arbitration, the Customers claimed Respondent UBS recommended they concentrate their accounts in Puerto Rico Closed-End Funds ("CEFs" or "Funds") and Puerto Rico municipal bonds ("PR Bonds"). The Customers sought damages of \$250,000.00. Claimant was not a party to the Arbitration but, under FINRA Rules, the Arbitration was still reportable against him because he was their financial advisor ("FA") at UBS. Respondents denied all of the allegations and raised defenses against the Arbitration. The Customers eventually settled with Respondents. Claimant did not participate in the settlement negotiations, was not a party to the settlement agreement, and did not contribute any monies to the settlement.

The Customers were business owners with a profitable company. They sold that company in 2001 to one of their sons. After that sale, the Customers decided to start a real estate development business. Before they opened their accounts at UBS, the Customers had experience investing in United States and Puerto Rico securities at several broker-dealers. At Oriental Financial Services they held Puerto Rico preferred bank stocks, U.S. mutual funds, and other investments. The Customers also had accounts at Popular Securities where they owned Puerto Rico bank stocks. Their first UBS account was opened in 2007. Their net worth was stated to be around \$2 million with six years of investment experience in equities and bonds. At that time the Customers moved all of the securities held at Oriental Financial Services to UBS.

The Customers began using a strategy to diversify the type of their securities to reduce risk and improve the general quality of their investments. Later, the Customers advised Claimant that they were going to develop housing projects. To be able to do this, they required additional income from their investments. Claimant spoke with them about the possibility of buying CEFs. Claimant was careful to explain all of the pros and cons of investing in these Funds. In February 2008, the Customers decided to buy their first Funds. With Claimant as their FA, the Customers used strategies which turned out to be profitable. The Customers invested in a range of United States and Puerto Rico

investment products. Their account documents showed that they were diversified in more than one geographical area.

In September 2013, Claimant recommended to the Customers that they reduce their Puerto Rico credit exposure. However, they did not want to sell their Puerto Rico bonds because they believed any current decrease in their value eventually would be reversed and return to higher levels. Over the course of the next several months, Claimant strongly recommended that the Customers sell some of the PR bonds. However, the Customers regularly refused his advice and decided to hold on to them. Claimant never recommended a strategy where the Customers would concentrate their portfolio in Puerto Rico products. Moreover, the Customers continued to geographically diversify their securities.

The Customers were responsible for ultimately electing their investment strategy which was to hold Puerto Rico securities. This was due to their fundamental need to increase monthly, tax-advantaged income necessary for the financing of their real estate business. After the Puerto Rico bond market collapsed in the late summer of 2013, Claimant regularly advised the Customers to reduce their exposure to Puerto Rico credit risk, that is, to sell their Puerto Rico securities. The documentary evidence clearly reflects that the Customers rejected those recommendations and opted instead to hold onto their Funds and Puerto Rico bonds. It is particularly noteworthy that the Customers continue to this day to remain with Claimant as their FA at UBS to handle their investment accounts.

The documentary and testimonial evidence clearly shows that the Customers were responsible for any losses in their UBS accounts. In fact, had the Customers followed the sound recommendations Claimant made to them over a lengthy period of time, the performance of their accounts at UBS would have been better. UBS settled with the Customers solely for business purposes. The Arbitrator concludes that the claims the Customers made in their action were factually impossible or clearly erroneous, and their claims against UBS were false, including any implication that Claimant made unsuitable recommendations or engaged in any other improper activity. To the contrary, all the documentary and testimonial evidence proved that everything Claimant did was both suitable and appropriate for these Customers.

In sum, the Customers' portfolio at UBS was geographically diversified and not concentrated in Puerto Rico credit. The strategy the Customers adopted was to buy securities which would maximize their income to finance their real estate development venture. There is no basis in the evidence to support the allegations in the Arbitration. The Claimant regularly explained to the Customers every important detail about the Funds and Puerto Rico bonds. Whenever the Customers decided to purchase more Funds or Puerto Rico bonds, Claimant would remind them about the inherent risks and other features of those investments. The Arbitrator finds that Claimant's testimony was fully credible as to all material facts alleged in the Petition. The Arbitrator also finds that all exhibits received into evidence support expungement on grounds (A)(C) under Rule 2080.

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 UBSPR and UBS are each 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: November 10, 2021 1 session = \$ 1,150.00

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

Hearing: February 17, 2022 1 session

Total Hearing Session Fees = \$ 2,300.00

Per the parties' agreement, 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

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

02/28/2022

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.

February 28, 2022

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