

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Sonia Pou Monagas

Case Number: 21-02413

vs.

Respondent

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

REPRESENTATION OF PARTIES

For Claimant Sonia Pou Monagas: Sonia M. Lopez, Esq. and Roberto C. Quiñones-Rivera, Esq., McConnell Valdes LLC, San Juan, Puerto Rico.

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

CASE INFORMATION

Statement of Claim filed on or about: September 23, 2021.
Sonia Pou Monagas signed the Submission Agreement: September 23, 2021.

Statement of Answer filed by Respondents on or about: September 27, 2021.
UBS signed the Submission Agreement: September 27, 2021.
UBSPR signed the Submission Agreement: September 27, 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, Respondents supported Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers 1841661 and 1983282.

In the Statement of Answer, Respondents requested that Claimant's request for expungement be granted.

OTHER ISSUES CONSIDERED AND DECIDED

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

On February 25, 2022, Claimant advised that the customers in Occurrence Number 1841661 ("Customers A, B, C, and D") and 1983282 ("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, telephonic hearing on March 4, 2022, 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 occurrences in the CRD.

The Arbitrator also reviewed the settlement documentation related to Occurrence Numbers 1841661 and 1983282, 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 amount.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: all pleadings; the Statement of Claim; Respondents Answer; Claimant's BrokerCheck® Report; the settlement agreements in the underlying actions; the claims in the underlying actions; miscellaneous transaction statements; miscellaneous customer reports; emails; testimony during the expungement hearing; and, the notification to the Customers.

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 1841661 and 1983282 from registration records maintained by the CRD for Claimant Sonia Pou Monagas (CRD Number 1813503) with the understanding that, pursuant to Notice to Members 04-16, Claimant 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 with respect to both Occurrences:

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 is a registered investment representative employed by Respondents. She is seeking to expunge her CRD records and BrokerCheck® Report of the following erroneous occurrences.

Occurrence Number 1841661:

Claimant was not the UBS investment advisor representing three of the Customers (A, B, and C) in this action during the relevant period. These Customers were clients of a different investment team and Claimant was not involved in the alleged sales practice violations. Subsequently, after the departure of the original investment team, Claimant inherited serving as investment advisor to Customers A, B and C, and Claimant's name was placed as the investment advisor on these Customers' account. Therefore, when the occurrence was recorded, her name appeared as their investment advisor and the occurrence was erroneously and inaccurately recorded on Claimant's CRD record and BrokerCheck® Report.

The fourth Customer (D) was a long-time family friend who originally opened an account with Claimant around 1980 while she was employed at another entity. When Claimant went to work for Respondents, Customer D moved her account there. Customer D was an experienced investor who had kept abreast of market developments. She was a close friend of Claimant and they communicated frequently both in person and by telephone. Even though Claimant recommended to Customer D diversifying with several investment options, Customer D consistently expressed she wanted to continue investing in securities that produced the highest amount of tax-free income. During the next few years (late 1990 and early 2000) Customer D's GNMA's were redeemed, and she invested the proceeds in a variety of Puerto Rico closed-end funds which offered high, regular tax-exempt income as

well and shares of other similar Puerto Rico (“PR”) products. Claimant explained the investments did not trade in a public market and their liquidity could be limited. Customer D had divorced early in life and had later formed a long-term domestic partnership with a very successful attorney. Upon her partner’s demise, Customer D inherited approximately \$4,000,000.00 (in three different instalments). The inherited securities were mostly tax-free PR products with limited liquidity. Upon the receipt of the inherited securities, Claimant met several times with Customer D to discuss investment alternatives and described the nature and risks of each type of security. Customer D was emphatic that she wished to hold the securities purchased by her late partner and that she was not interested in selling any of them and that as the securities matured, the proceeds should be invested in similar products. Claimant and Customer D frequently discussed the PR economy and Claimant consistently recommended that Customer D invest in non-PR income producing products. However, because the recommended investment securities would produce lower after-tax income than the PR products in Customer D’s portfolio and could be subject to U.S. estate liability, the recommendations were rejected. Claimant continued to make sound, prudent recommendations to Customer D. Among the recommendations made was that Customer D improve the credit quality of her portfolio. Claimant was successful in getting Customer D to invest in AAA Funds that had virtually no exposure to PR credit (these funds were guaranteed and secured by the U.S. government). As a result of Claimant’s sound recommendations, Customer D’s portfolio was spared from a more severe impact following the 2013 PR market collapse. Customer D did not purchase - she inherited a large portion of the securities that were at issue in the Statement of Claim in the underlying FINRA arbitration. Unfortunately, by refusing to sell any of the inherited securities and continuing to follow her late partner’s investment strategy, the value of the PR securities in Customer D’s portfolio diminished in value.

The claims recorded on Claimant’s CRD and BrokerCheck® reports regarding Occurrence Number 1841661 are clearly erroneous and false as Claimant at no time engaged in the alleged sales practice violations. This occurrence qualifies to be expunged under the provisions of FINRA Rule 2080 (b)(1)(A): the claim, allegation or information is factually impossible or clearly erroneous, FINRA Rule 2080 (b)(1)(B): the registered person was not involved in the alleged invest-related sales practice violation, forgery, theft, misappropriation, or conversion of funds, and FINRA Rule 2080 (b)(1)(C): the claim, allegation or information is false.

This false allegation in Claimant’s CRD and BrokerCheck® reports harm Claimant’s reputation by misinforming the public of her conduct towards Customers A, B, C and D. The disclosure not only makes the record inaccurate, but in addition it conveys the false impression that Claimant acted improperly. There is no benefit to the investment public that outweighs the harm to Claimant’s reputation through the continued disclosure of the occurrence. For all these reasons, Claimant is entitled to have this occurrence expunged from her CRD records and BrokerCheck® report.

Occurrence Number 1983282:

The Customers (father, daughter and Trust) were longtime investors with ample experience investing in a wide range of securities. The father is a very successful entrepreneur who co-owned several corporations engaged in the sale of automobiles, real estate and aircraft. The daughter worked as the Human Resource Manager at one of the automobile entities.

The Customers' accounts were being serviced by a Miami, Florida-based service advisor employed by Respondents who was a personal friend of the Customers. Because the Customers were residents of Puerto Rico, the Miami, Florida-based advisor's name could not appear as the sole advisor servicing the accounts. The Miami, Florida advisor then formed a partnership with a PR-based investment advisor team as a mere formality in order to overcome this issue. When the PR-based advisor team left Respondents' employment in 2001, Claimant was assigned as the PR co-broker and her name began appearing as a formality on the Customers' account statements. Claimant did not make any investment recommendations, or meet the Customers until the Miami, Florida broker left Respondents' employment in 2006. When Claimant assumed the investment servicing of the Customers' accounts, they were heavily concentrated in closed end PR products.

Upon becoming the Customers' investment broker, Claimant discussed the investments and explained the characteristics and risks of each. Claimant made several recommendations aimed at balancing the Customers' portfolio and improving its credit quality. As a result of Claimant's prudent and suitable recommendations, the Customer's portfolio invested in various types of securities such as open-end-funds that were considered PR paper for tax purposes even though they were backed by securities with U.S. credit backing and had little exposure to the PR credit risk and other non-PR securities. Due to Claimant's prudent and suitable recommendations, when the PR investment bond market collapsed in 2013, the Customers' accounts had only one third exposure to PR's economy. As of April 2020 (seven years after the PR bond market collapse), the father's account had an out-of-pocket profit of \$1,425,407.00 and his daughter's account netted her an out-of-pocket profit of \$47,118.00. Claimant's recommendations spared the Customers from a more severe impact following the PR bond market decline.

The claims in the Statement of Claim in the underlying FINRA arbitration are clearly erroneous and false with respect to Claimant as at no point did she engage in any of the alleged sales practice violations and this action should not appear on Claimant's CRD or BrokerCheck® reports. Because of all these facts, Claimant's expungement request meets the standard for expungement under FINRA Rule 2080 (b)(1)(A): the claim, allegation or information is factually impossible or clearly erroneous, FINRA Rule 2080 (b)(1)(B): the registered person was not involved in the alleged invest-related sales practice violation, forgery, theft, misappropriation, or conversion of funds, and FINRA Rule 2080(b)(1)(C) the claim, allegation or information is false.

Claimant made suitable recommendations and performed her duties as an investment representative in a thorough and professional manner. The public disclosure of this false allegation not only makes the record inaccurate but does not offer any protection to the investment public and has no regulatory value. If not expunged, the false allegation would cause great harm to Claimant's professional reputation and damage her earning ability.

Claimant has not previously requested expungement of either Occurrence Numbers 1841661 or 1983282. Respondents settled both underlying FINRA arbitrations as a business decision. Neither settlement was conditioned on the expungement of the broker's CRD or BrokerCheck® records. Claimant did not participate in either settlement. Claimant did not contribute to either settlement.

ARBITRATOR

Elena G. Rodriguez

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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

Elena G. Rodriguez

Elena G. Rodriguez
Sole Public Arbitrator

03/16/2022

Signature Date

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March 16, 2022

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