

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Robert A. Clear

Case Number: 21-02456

vs.

Respondent
UBS Financial Services Inc.

Hearing Site: Jersey City, New Jersey

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

REPRESENTATION OF PARTIES

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

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

CASE INFORMATION

Statement of Claim filed on or about: September 28, 2021.
Robert A. Clear signed the Submission Agreement: September 28, 2021.

Statement of Answer filed by Respondent on or about: October 15, 2021.
UBS Financial Services Inc. signed the Submission Agreement: October 15, 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 Numbers 1188546 and 1053490.

In the Statement of Answer, Respondent requested that all costs and fees be assessed solely against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

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

By correspondence dated October 15, 2021, Claimant advised FINRA Dispute Resolution Services of the parties' agreement to proceed with a single arbitrator in this matter.

On December 8, 2021, Claimant advised that the customers in Occurrence Numbers 1188546 and 1053490 ("Customers") were served with the Statement of Claim and notice of the date and time of the expungement hearing. On December 8, 2021, Claimant filed an Affidavit 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 telephonic hearing on January 7, 2022, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent did not participate in the expungement hearing and 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 occurrences in the CRD.

The Arbitrator did not review the settlement documentation related to Occurrence Number 1188546. The Arbitrator noted that upon diligent search, the settlement document could not be produced due to the age of the complaint. The Arbitrator considered the amount of payment made to any party to the settlement and noted that the date of the settlement preceded the effective date of the rule against conditioned settlements. The Arbitrator also noted that Claimant did not contribute to the settlement amount.

The Arbitrator reviewed the settlement documentation related to Occurrence Number 1053490, 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 BrokerCheck® Report, the account documents, the settlement agreement, and the proof of service on 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 Number 1188546 from registration records maintained by the CRD for Claimant Robert A. Clear (CRD Number 48338) with the understanding that, pursuant to Notice to Members 04-16, Claimant Robert A. Clear 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; and the claim, allegation, or information is false.

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

This Occurrence is of a purely operational matter and does not involve any sales practice violation. The Customer intended to fund a 529 account but never delivered the paperwork to the firm. The matter was settled for a nominal amount in order to avoid the cost of litigation. Claimant did not participate in the settlement or contribute to it. Due to the age of the Occurrence, the settlement agreement could not be located after a diligent search. Claimant testified that to the best of his knowledge, the settlement was not conditioned on consent to expungement.

This Occurrence should be expunged on the grounds that it is clearly erroneous, factually impossible or false. This Occurrence did not involve a sales practice violation and was purely of an administrative, back-office nature for which Claimant was not responsible. Claimant also testified as to the negative impact this disclosure has had on his business development efforts.

The interests of consumer protection and awareness being in no way negatively implicated, the Arbitrator recommends the above Occurrence be expunged from Claimant's CRD.

2. The Arbitrator recommends the expungement of all references to Occurrence Number 1053490 from registration records maintained by the CRD for Claimant Robert A. Clear (CRD Number 48338) with the understanding that, pursuant to Notice to Members 04-16, Claimant Robert A. Clear 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; and the claim, allegation, or information is false.

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

This Occurrence was of an operational nature and it did not involve a sales practice violation. The Customer’s unsolicited purchase of EMC stock was inadvertently placed in the wrong account. When the error was noticed, the firm rectified its mistake without loss to the client, who continued to hold the position until the account was transferred away. The firm settled the claim for a nominal amount without participation or contribution by Claimant to avoid the expense of litigation. The agreement was not conditioned on consent to expungement.

This Occurrence should be expunged on the grounds that it is clearly erroneous, factually impossible or false. This Occurrence did not involve a sales practice violation and was purely of an administrative, back-office nature for which Claimant was not responsible. Claimant also testified as to the negative impact this disclosure has had on his business development efforts.

The interests of consumer protection and awareness being in no way negatively implicated, the Arbitrator recommends the above Occurrence be expunged from Claimant’s CRD pursuant.

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 events 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: January 7, 2022 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

Robert E. Anderson

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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

Robert E. Anderson

Robert E. Anderson
Sole Public Arbitrator

02/01/2022

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 02, 2022

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