Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
James L. Candella

Case Number: 21-02619

vs.

Respondent
UBS Financial Services Inc.

Hearing Site: Nashville, Tennessee

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 James L. Candella: David I. Hantman, Esq., Bressler, Amery & Ross, P.C., New York, New York.

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

CASE INFORMATION

Statement of Claim filed on or about: October 15, 2021.
James L. Candella signed the Submission Agreement: October 15, 2021.

Statement of Answer filed by Respondent on or about: November 1, 2021.
UBS Financial Services Inc. signed the Submission Agreement: November 1, 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 request for expungement, informed that it does not intend to further participate in this proceeding and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers 1571836, 1616206 and 2107765.

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

On or about December 2, 2021, Claimant advised that the customers in Occurrence Numbers 1571836, 1616206 and 2107765 ("Customer A, Customer B and Customer C") were served with the Statement of Claim and notice of the date and time of the expungement hearing. On or about December 2, 2021, Claimant filed with FINRA Dispute Resolution Services an Affirmation of Service, along with proof of service via FedEx upon Customer A, Customer B and Customer C, advising that Customer A, Customer B and Customer C were served with the Statement of Claim and notice of the date and time of the expungement hearing.

On or about December 8, 2021, Claimant filed with FINRA Dispute Resolution Services an email dated December 6, 2021, from Customer A involved in Occurrence Number 1571836, in which Customer A stated that Customer A does not support Claimant's request for expungement.

The Arbitrator conducted a recorded hearing by videoconference on December 20, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent did not participate in the expungement hearing.

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 occurrences in the CRD.

The Arbitrator noted that the disputes related to Occurrence Numbers 1571836, 1616206 and 2107765 were not settled and, therefore, there were no settlement documents to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's testimony; Claimant's BrokerCheck® Report; Claimant's Exhibits; and Customer A's email dated December 6, 2021.

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 1571836, 1616206 and 2107765 from registration records maintained by the CRD for

Claimant James L. Candella (CRD Number 4365560) with the understanding that, pursuant to Notice to Members 04-16, Claimant James L. Candella 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:

Occurrence Number 1571836

Customer A was a long-term client of Claimant, who held a moderate-sized Individual Retirement Account ("IRA"). Customer A sought an investment plan in which Customer A would participate in market upsides, have a guarantee against the downsides and would be a vehicle to replace Customer A's pension, should Customer A die before Customer A's wife.

Claimant and Customer A had many discussions about the Hartford Leader Principal First variable annuity ("Hartford Annuity") that had the benefits sought. Customer A was provided the Hartford Annuity's marketing materials, along with a prospectus and a written hypothetical presentation that evaluated three parameters: neutral market growth, down market and up market. All documents stated the Hartford Annuity had a seven-year surrender period. During numerous discussions, Claimant and Customer A reviewed in detail the Hartford Annuity's elements, including surrender charges.

Understanding the features, benefits and conditions of the Hartford Annuity, Customer A Purchased the Hartford Annuity in 2006. Customer A received regular statements from the Hartford Annuity issuer.

In 2011, Customer A advised Claimant that Customer A wanted to either liquidate or move the Hartford Annuity to Customer A's new employer's 401K. Claimant advised against doing so for two principal reasons: (1) Customer A's new employer's 401K may not accept this contractual investment; and (2) Customer A was in only year five of a seven-year surrender period and the cost of liquidating would be a certain amount, plus because of the Hartford Annuity's guaranteed "step-up" feature, Customer A would lose the benefit of more money. Importantly, Claimant advised Customer A that, even though Customer A had a new employer, there was no need to move or liquidate the Hartford Annuity, at all.

Nevertheless, shortly thereafter, Customer A completed a form to totally liquidate Customer A's IRA which contained the Hartford Annuity, then later complained about losing a certain amount, arguing Customer A understood the surrender period to be five

years, not seven. Respondent investigated Customer A's verbal complaint and denied Customer A's claim. Customer A did not subsequently file a claim for arbitration.

Claimant's conduct regarding the Hartford Annuity and advice given to Customer A were appropriate. Occurrence Number 1571836, therefore, should be expunged.

Occurrence Number 1616206

Claimant's original client, the mother of Customer B made all investment decisions until, aging, the mother turned these over to the daughter, Customer B. Claimant had weekly, monthly and annual interactions with the mother, then later, Customer B. In 2007, Customer B completed Respondent's form to open a family trust account that named Customer B as the trustee.

On the application, Customer B described Customer B's investment experience: twenty years equities and twenty years bonds; liquid assets of a certain amount; and net worth of a certain amount. Customer B's investment objective was capital appreciation with moderate risk.

In July of 2007, Customer B agreed to open an Access Program ("Access Program") account whereby an outside third-party money manager would invest approximately 20% of the trust portfolio in equities. This was a separately managed, fee-based account program. Customer B, on behalf of the trust, completed the Access Program account forms and applications which, with Respondent's algorithm, presented a variety of third-party money managers. Customer B selected Anchor Management ("Anchor Management"), investing a certain amount.

Notably, the Access Program application clearly indicated the fees Customer B would be charged for this account, ranging from 1.4% to 2.8%, depending on the amount being managed. For Customer B's investment, the fee would be approximately 2.5%. Customer B signed the form acknowledging all provisions, including the fee schedule.

Following the Access Program account opening in 2007, Claimant spoke to Customer B many times, both in-person and by telephone. Customer B received monthly statements from Respondent and received additional documents from Anchor Management. Customer B was provided sufficient information to understand fees associated with this account and did not complain for almost five years.

In May of 2012, Customer B wrote Respondent, alleging Customer B was told Customer B's fee would be 1%, not 2.5%. Further, the mother of Customer B should not have invested "primarily in stocks" (even though Customer B personally made all investment decisions and stocks represented only a small percentage of the trust's assets). Respondent investigated Customer B's complaint and found it baseless and without merit. Fees had been disclosed and were consistent with other full-service firms. Customer B took no further action and did not file an arbitration claim.

As Claimant's conduct was professional, appropriate and mindful of Customer B's desires, Occurrence Number 1616206 should be expunged.

Occurrence Number 2107765

Customer C was a long-term client of Claimant, beginning in 2001 at Morgan Stanley ("Morgan Stanley") and in 2007, Claimant moved Customer C's accounts to Respondent. Customer C was a very aggressive investor with high risk tolerance, whose accounts contained between 80% and 100% equities, usually 100%. Customer C was a savvy user of margin accounts, and all transactions were strictly Customer C's decisions, unsolicited by Claimant. Customer C relied on her business-partner husband and her Certified Public Account ("CPA") for financial advice.

Customer C opened a credit line with Respondent, collateralized by Customer C's investment account with Respondent. Customer C's intent was to achieve lower loan interest, a more favorable collateral ratio and to obtain more credit (e.g., even more aggressive investing leverage). Customer C acknowledged and signed the account application which clearly stated that Customer C's investment account with Respondent is, and continues to be, pledged as collateral for credit line loans. Customer C signed forms containing important disclosures about the credit line account, including the following language: "Collateral Account at Respondent (a bold heading)," "…account to be pledged to secure the Borrower's credit line" and "Full Collateral (Securities) Account Title."

Customer C discussed margin buying and selling with Claimant extensively, both before and after opening the credit line. Customer C had many years of margin purchasing and a deep knowledge of such activities. Customer C understood the concept and relationship of collateralized accounts to line-of-credit accounts, and there was no question Customer C knew the new credit line was exposed to possible liquidation. Customer C's monthly statements contained information about remaining credit, and Customer C was on notice securities in her account at Respondent served as collateral for loans.

Over time, Customer C became frustrated with Respondent's conservative line-of-credit policies and began to gripe that Respondent should allow Customer C to be even more aggressive. At one point, Customer C complained that Customer C did not understand Customer C's holdings would be used as collateral. In one communique, Customer C said Respondent's lending policies were costing Customer C's business. Customer C's comments were consistently aimed at Respondent, while continuing to compliment Claimant.

Respondent investigated Customer C's complaint, using outside counsel. Respondent found Customer C's complaint to be without merit and, in its denial letter, explained in detail its conclusion that Customer C understood and acknowledged Customer C's investment account would be used as collateral.

Claimant's actions were professional and appropriate in dealing with Customer C's account, and the Arbitrator therefore recommends that Occurrence Number 2107765 be expunged from Claimant's record.

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 a party, Respondent 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: December 20, 2021 1 session		
Total Hearing Session Fees	=$	1,150.00

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

Karl A. Vogeler, III - 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

Karl A. Vogeler, III **12/28/2021**

Karl A. Vogeler, III
Sole Public Arbitrator

Signature Date

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December 28, 2021
Date of Service (For FINRA Dispute Resolution Services use only)