

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Alejandro Gonzalez

Case Number: 21-02952

vs.

Respondent
UBS Financial Services, Inc.

Hearing Site: Boca Raton, Florida

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 Alejandro Gonzalez: Thomas M. McHugh, 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

Unopposed Petition for Expungement filed on or about: December 1, 2021.
Alejandro Gonzalez signed the Submission Agreement: December 1, 2021.

Statement of Answer filed by Respondent on or about: December 15, 2021.
UBS Financial Services, Inc. signed the Submission Agreement: December 15, 2021.

CASE SUMMARY

In the Unopposed 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, Respondent did not oppose Claimant’s expungement request and stated that it did not wish to participate in this proceeding.

RELIEF REQUESTED

In the Unopposed Petition for Expungement, Claimant requested expungement of Occurrence Number 2102426 from his CRD records.

In the Statement of Answer, Respondent requested assessment of all fees and costs against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

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

Pursuant to the agreement of the parties, FINRA appointed a panel comprised of one arbitrator in this matter.

On February 16, 2022, Claimant sent the complaining customer on the joint account in Occurrence Number 2102426 (“Complaining Customer”) a copy of the Statement of Claim and notice of the date and time of the expungement hearing. On February 21, 2022, Claimant filed an Affirmation of Service confirming that the Complaining Customer was served with the Statement of Claim and notice of the date and time of the expungement hearing.

On February 21, 2022, Claimant filed correspondence stating that the other joint-account holder in Occurrence Number 2102426 did not file any complaints and, based on account statements, has the same address as the Complaining Customer, where notice of this hearing was already sent. The co-owners of the joint account are hereinafter jointly referred to as the “Customers.”

The Arbitrator conducted a recorded, telephonic hearing on February 22, 2022, 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 occurrence in the CRD.

The Arbitrator also reviewed the settlement documentation related to Occurrence Number 2102426, 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 and credible testimony, as well as Claimant’s Exhibits A, B, C, D, F, H, I, J and K, as more specifically described in the Award section below.

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 2102426 from registration records maintained by the CRD for Claimant Alejandro Gonzalez (CRD Number 6961543) with the understanding that, pursuant to Notice to Members 04-16, Claimant Alejandro Gonzalez 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:

The underlying basis for the complaint registered by the Complaining Customer was that Claimant in this expungement proceeding had engaged in unauthorized trading of the Customers' account (See Exhibit A, Claimant's Broker Check Report). Based on the Exhibits produced and the testimony of Claimant, whose testimony is deemed to be credible, it is clear that there was no unauthorized trading, but, instead, Claimant was executing directives from his employer, Respondent. Exhibit B is an article indicating that Respondent was discontinuing its relationships with Venezuelan customers due to political reasons. The Customers in the underlying complaint were such customers. The Customers were not prior clients of Claimant, but were assigned to him for the purpose of closing or transferring the account elsewhere. The evidence showed that Claimant followed proper protocols of Respondent in accomplishing the transfer of the Customers' account. See Exhibits C, D, F, and H. These exhibits represent numerous communications between the Complaining Customer and UBS with regard to the transfers. The evidence also indicated that in addition to the documents required for the transfer, the protocol called for multiple phone calls with customers to verify that the transfer requests were legitimate. It wasn't until late November, 2020 (see Exhibit I) when Claimant was made aware of a potential fraud with respect to the Customers' account when the Complaining Customer made contact with Claimant requesting transfers. The testimonial evidence indicated that what in fact happened was that the perpetrator of the fraud had control over the Customers' emails and phone. That evidence also indicated that the perpetrator of the fraud was able to open accounts at other institutions in the name of the Customers, the same accounts to which the Customers' account assets with Respondent were transferred. Upon discovery of the fraud, (see Exhibits I, J and K which contain various documents discussing the fraud, and includes a copy of the settlement agreement between Respondent and the Customers), Respondent commenced

an investigation, and Claimant’s role in the process ceased. As a result of the investigation, it was determined that a fraud had been committed. Respondent made attempts to recall the transfers and was partially successful. Respondent (by the settlement agreement – Exhibit K) made the Customers whole. In all of the activity surrounding the fraud and its investigation, Claimant did not play any role, was not involved in the settlement agreement and made no contribution to the settlement.

Based on the testimony and the documentary evidence, it is clear that Claimant acted properly throughout the entire process and as a result, it is the recommendation of this Arbitrator that Claimant is entitled to have his CRD record expunged having met the requirements of FINRA Rule 2080(b)(1)(a) as the claim is factually impossible or clearly erroneous; and 2080(b)(1)(c) as the claim is false.

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: February 22, 2022 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

Mark A Bilawsky

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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

Mark A Bilawsky

Mark A Bilawsky
Sole Public Arbitrator

02/25/2022

Signature Date

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February 25, 2022

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