

Sax v Financial Indus. Regulatory Auth., Inc.
2020 NY Slip Op 30332(U)
January 29, 2020
Supreme Court, New York County
Docket Number: 656934/19
Judge: Arthur F. Engoron
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said application having regularly come on to be heard, and after due deliberation having been had thereon,

NOW, upon the application of Bressler, Amery & Ross, P.C., attorneys for Petitioner, it is hereby

ORDERED that the Petition is hereby granted solely to that portion of the arbitration panel's Award in the FINRA Arbitration recommending expungement, and is confirmed consistent with the below:

After considering the pleadings, the testimony and evidence presented at the hearing, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

- I. The Arbitrator recommends the expungement of all references to Occurrence Number 1483007 from registration records maintained by the Central Registration Depository, for Claimant Benjamin Stephen Sax (CRD 867486), with the understanding that, pursuant to Notice to Members 04-16, Claimant Benjamin Stephen Sax 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, 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.
- II. The Arbitrator has made the above Rule 2080 findings based on the following reasons:

The customer, a wealthy, sophisticated, experienced investor, attorney and senior executive for several large financial firms and global head of an international law firm asserted two claims against UBS.

The claim, 1483007, involved two separate allegations. The first allegation related to securities transferred into the customer's UBS account a position in a single financial stock. Mr. Sax recommended diversification in the Horizon core value portfolio, a third-party money manager unaffiliated with UBS with a good reputation, to which the customer granted discretionary authority, along with a municipal bond allocation. The customer executed all appropriate documents and received all required disclosures. Mr. Sax

did not make any investment decisions, which were made solely by Horizon as the investor had agreed would be the case. The customer received monthly statements detailing the investments and holdings. The customer's investment declined during the financial crisis of 2008 – 2009, as did the market generally. UBS investigated the allegation and denied it, determining that the allegation had no merit. The allocation of a portion of the customer's overall net worth in a core value fund that provided diversification was suitable for the customer and was not misrepresented. The customer did not proceed further with this allegation after the UBS denial.

The second allegation asserted by the customer was that UBS failed to sell certain UBS shares held by him in his UBS employee stock option account at the time UBS sold the others shares he held in accordance with instruction as just discussed. The evidence showed that the additional securities were held in an employee stock option account that could not be sold by Mr. Sax and required the client to interact with the corporate employee financial services area, a fact that the client knew from prior experience. No request had been made to sell the stock options in accordance with that normal procedure and Mr. Sax told the investor that he could not process orders for transfers of employee stock options controlled by the employee services area. UBS investigated this allegation and denied it as well, determining that the allegation had no merit. The client did not proceed further with this allegation either.

Given the evidence adduced at the expungement hearing and as above described, these claims against Mr. Sax were factually impossible, clearly erroneous and false and he is entitled to have them expunged from his records.

- III. The Arbitrator recommends the expungement of all references to Occurrence Number 1467718 from registration records maintained by the Central Registration Depository ("CRD"), for Claimant Benjamin Stephen Sax (CRD# 867486), with the understanding that, pursuant to Notice to Members 04-16, Claimant Benjamin Stephen Sax 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, the Arbitrator has made the following Rule 2080 affirmative finding of fact:

- 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; and the claim, allegation, or information is false.

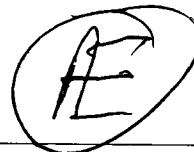
IV. The Arbitrator has made the above Rule 2080 finding based on the following reasons:

The claim concerned the illiquidity of the Auction Rate Securities market in 2008. Mr. Sax was not responsible for the illiquidity of the Auction Rate Securities market and did not recommend the security to the client. In fact, Mr. Sax did not recommend the purchase of any security to the customer and had no substantive conversations with him with respect to these purchases. The claim was ultimately resolved by UBS pursuant to a consent with regulators. Under this consent UBS, along with numerous other brokerage firms, agreed to repurchase Auction Rate Securities from its clients at par value. Mr. Sax was not involved in the regulatory consent, was not asked to contribute toward the repurchase, nor did he do so. The customer profited from his Auction Rate Securities investments, receiving interest during the illiquidity period and the full par value of his investments upon UBS's repurchase.

There was no settlement agreement in this case but given the evidence adduced at the expungement hearing and as above described, these claims against Mr. Sax were factually impossible, clearly erroneous and false and he is entitled to have them expunged from his records.

ORDERED that the Award is confirmed and that all references to Occurrence Numbers 1483007 and 1467718 be expunged from the FINRA CRD records of Benjamin S. Sax (CRD# 867486).

Enter,



Hon. Arthur F. Engoron, J.S.C.