

**Award  
FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimant  
James R. Young

Case Number: 13-01579

vs.

Respondents  
Joe Dickerson  
Tom Gawronski  
Mary Heitmeyer  
Urban Heitmeyer  
Joyce Heitmeyer  
Johnny Jones  
James Merkel  
Deborah Merkel  
Marian Patton  
James Smith  
Judith Smith  
Teresa Wilson  
Jim Wilson

Hearing Site: Denver, Colorado

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Nature of the Dispute: Associated Person vs. Customers

This case was decided by a majority-public panel.

**REPRESENTATION OF PARTIES**

For Claimant James R. Young ("Claimant"): Raquel Terrigno, Esq., Lax & Neville LLP,  
New York, New York.

Respondent Joe Dickerson appeared pro se.  
Respondent Tom Gawronski did not enter an appearance.  
Respondent Mary Heitmeyer did not enter an appearance.  
Respondent Urban Heitmeyer did not enter an appearance.  
Respondent Joyce Heitmeyer did not enter an appearance.  
Respondent Johnny Jones did not enter an appearance.  
Respondent James Merkel did not enter an appearance.  
Respondent Deborah Merkel did not enter an appearance.  
Respondent Marian Patton did not enter an appearance.  
Respondent James Smith did not enter an appearance.  
Respondent Judith Smith did not enter an appearance.  
Respondent Teresa Wilson did not enter an appearance.

Respondent Jim Wilson did not enter an appearance.

Hereinafter the above referenced Respondents are collectively referred to as "Respondents."

### **CASE INFORMATION**

Statement of Claim filed on or about: May 23, 2013.  
Claimant signed the Submission Agreement: May 23, 2013.  
Amended Statement of Claim filed on or about: May 12, 2014.  
Joe Dickerson signed the Submission Agreement: August 28, 2014.  
Tom Gawronski did not sign the Submission Agreement.  
Joyce Heitmeyer did not sign the Submission Agreement.  
Urban Heitmeyer did not sign the Submission Agreement.  
Mary Heitmeyer did not sign the Submission Agreement.  
Johnny Jones did not sign the Submission Agreement.  
Deborah Merkel did not sign the Submission Agreement.  
James Merkel did not sign the Submission Agreement.  
Marian Patton did not sign the Submission Agreement.  
Judith Smith did not sign the Submission Agreement.  
James Smith did not sign the Submission Agreement.  
Jim Wilson did not sign the Submission Agreement.  
Teresa Wilson did not sign the Submission Agreement.

### **CASE SUMMARY**

Claimant requested expungement of five arbitrations relating to his sale of Lehman Principal Protected Structured Products to customers Johnny Jones, Marian Patton, James & Judith Smith, Jim Wilson and Teresa Wilson while he was employed by UBS Financial Services Inc. ("UBS").

In the Amended Statement of Claim, Claimant included additional requests for expungement of customer complaints filed by Joe Dickerson, Mary Heitmeyer, Urban & Joyce Heitmeyer, James Merkel, Deborah Merkel and Tom Gawronski. Claimant's requests for expungement of the customer complaints and arbitrations on his Central Registration Depository records, Forms U4 and U5, relate to his sale of Lehman Brothers Structured Products, including, but not limited to, Lehman Brothers 100% Principal Protected Notes ("PPNs").

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of the five underlying arbitrations relating to Lehman Principal Protected Structured Products reported on his Forms U4 and U5.

In the Amended Statement of Claim, Claimant requested expungement of the Lehman Principal Protected Structured Products arbitrations and customer complaints from his Central Registration Depository record pursuant to FINRA Rules 2080 and 12805 on the basis that he was not involved in the alleged wrongdoing.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

On May 12, 2014, Claimant filed a request to amend his Statement of Claim. On June 10, 2014, the Panel granted Claimant's unopposed request to file an Amended Statement of Claim.

On August 25, 2014, Claimant withdrew his request for expungement of the James Merkel and Deborah Merkel complaint.

On October 7, 2014, the Panel conducted a recorded telephonic hearing so Claimant could present evidence on his uncontested request for expungement. Respondents did not participate in the expungement hearing, with the exception of Respondent Joe Dickerson, who stated he supports Claimant's request for expungement.

The Panel reviewed the settlement documents and considered the amount of payments made to any party and any other terms and conditions of the settlements executed in the customer complaints and/or arbitrations at issue in Claimant's expungement request, with the exception of Tom Gawronski's customer complaint. The Panel finds that a settlement agreement does not exist as to the Tom Gawronski complaint as it was closed with no action and denied by UBS. The Panel determined that no party conditioned the settlements upon agreement not to oppose a request for expungement. The Panel also determined that Claimant did not contribute to any of the settlements.

In recommending expungement, the Panel relied upon the following documentary or other evidence:

- a) The Statements of Claim in the underlying arbitrations and written complaints;
- b) The Settlement Agreements between UBS and the customers, including the amounts paid by UBS to the customers and any relevant terms and conditions of the Settlement Agreements;
- c) The pleadings in this action (including Claimant's Amended Statement of Claim/Application for Expungement);
- d) Claimant's BrokerCheck report;
- e) Michael Dimler's research reports covering Lehman Brothers;
- f) Internal UBS e-mails amongst the Structured Products Group and UBS executives;
- g) UBS marketing materials regarding Structured Products;
- h) Lehman Structured Product Free Writing Prospectuses; and
- i) Customer trade confirmations for their purchases of Lehman Structured Products.

The Panel has agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the expungement hearing, and the post-hearing submissions, the Panel has decided in full

and final resolution of the issues submitted for determination as follows:

1. The Panel recommends the expungement of all references to the following occurrences of customer dispute information from Claimant James R. Young's (CRD #720080) registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to Notice to Members 04-16, Claimant James R. Young must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

CRD Occurrence numbers

|         |         |         |
|---------|---------|---------|
| 1503554 | 1506367 | 1583685 |
| 1576698 | 1532372 | 1594612 |
| 1583693 | 1569714 | 1603857 |

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 12805 of the Code, the Panel has made the following Rule 2080 affirmative findings of fact:

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.

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

The statements made by UBS, Claimant's former employer, in Claimant's U4 and U5 records are false and misleading because any sales practice violations were caused by UBS, not Claimant. Specifically, the Panel finds that the UBS Structured Products Department continued to tout Lehman Brothers structured products despite (1) mounting evidence that Lehman Brothers' creditworthiness was crumbling, and (2) increasingly pointed concern among UBS executives that the sale of Lehman Brothers products should be suspended. UBS' Structured Products Group deliberately prevented the distribution of material information about Lehman Brothers' deteriorating financial condition and continued to recommend the sale of Lehman Brothers structured products despite clear evidence of the company's rapid decline, to the detriment of both its financial advisors and customers.

Furthermore, Claimant did not contribute to any of the settlements between UBS and the customers, and the Settlement Agreements do not contain any language indicating an agreement not to oppose expungement.

To the extent the Panel has missed any information required for this expungement recommendation, it is the Panel's intention to expunge all traces of the above referenced customer complaints and arbitrations that UBS wrongfully reported on Claimant's Forms U4 and U5.

2. Any and all relief not specifically addressed herein is denied.

**FEES**

Pursuant to the Code, the following fees are assessed:

**Filing Fees**

FINRA Dispute Resolution assessed a filing fee\* for each claim:  
Initial Claim Filing Fee = \$ 1,250.00

*\*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 Claimant's former firm, UBS Financial Services Inc. is assessed the following:

Pre-Hearing Processing Fee = \$ 750.00  
Hearing Processing Fee = \$ 2,200.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed or waived:

April 9, 2014, adjournment by Claimant = waived  
May 20, 2014, adjournment by Claimant = \$1,000.00

The Panel has assessed \$1,000.00 of the adjournment fees to Claimant.

**Hearing Session Fees and Assessments**

The Panel has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with the Panel @ \$1,000.00/session = \$1,000.00  
Pre-hearing conference: December 11, 2013 1 session

One (1) Hearing session on expungement request @ \$1,000.00/session = \$1,000.00  
Hearing Date: October 7, 2014 1 session

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Total Hearing Session Fees = \$2,000.00

The Panel has assessed \$2,000.00 of the hearing session fees to Claimant.


All balances are payable to FINRA Dispute Resolution and are due upon receipt.

ARBITRATION PANEL

|                     |   |  |
|---------------------|---|--|
| Samuel L. McClaren  | - | Public Arbitrator, Presiding Chairperson |
| Charles G. Michaels | - | Public Arbitrator                        |
| Stephen A. Kohn     | - | Non-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.

Concurring Arbitrators' Signatures

  
\_\_\_\_\_  
Samuel L. McClaren  
Public Arbitrator, Presiding Chairperson

Dec. 2, 2014  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Charles G. Michaels  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Stephen A. Kohn  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

December 4, 2014  
\_\_\_\_\_  
Date of Service (For FINRA Dispute Resolution office use only)

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*Charles G. Michaels*  
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Charles G. Michaels  
Public Arbitrator

*12/4/2014*  
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Public Arbitrator

\_\_\_\_\_  
Signature Date

*12/4/2014*

\_\_\_\_\_  
Stephen A. Kohn  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

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