

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimants

UBS Financial Services Inc.
UBS Credit Corp.

Case Number: [REDACTED]

vs.

Respondent

[REDACTED]

Hearing Site: Washington, D.C.

Nature of the Dispute: Member and Non-Member vs. Associated Person

This case was decided by a majority-public panel.

REPRESENTATION OF PARTIES

For UBS Financial Services Inc. and UBS Credit Corp. (collectively, "the UBS Claimants"): James L. Komie, Esq., Howard & Howard Attorneys PLLC, Chicago, Illinois.

For Respondent [REDACTED] Michelle Atlas, Esq., Of Counsel to HLBS Law, Westminster, Colorado.

CASE INFORMATION

Statement of Claim filed on or about: February 7, 2017.

The UBS Claimants signed the Submission Agreement: February 7, 2017.

Answer and Counterclaim filed by Respondent on or about: April 30, 2017.

Respondent signed the Submission Agreement: April 30, 2017.

Answer to Counterclaim filed by the UBS Claimants on or about: May 17, 2017.

CASE SUMMARY

Claimants asserted the following causes of action: breach of contract and unjust enrichment. The causes of action relate to Respondent's alleged failure to repay sums due to the UBS Claimants pursuant to the terms of seven (7) promissory notes ("the Notes").

Unless specifically admitted in the Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

In his Counterclaim, Respondent asserted the following causes of action: breach of contract; unconscionability based on fraudulent inducement; unjust enrichment; breach of

implied duty of good faith and fair dealing; fraudulent inducement to accept employment; Virginia Employment Law breach; and quantum meruit. The causes of action relate to Respondent's employment with Claimant UBS Financial Services Inc.

Unless specifically admitted in their Answer to Counterclaim, the UBS Claimants denied the allegations made in the Counterclaim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested: compensatory damages in an amount of \$810,845.17, plus accrued interest as provided in the Notes; costs of arbitration, including filing fees, forum fees, attorneys' fees and interest; and such other and further relief as may be just and proper.

In the Statement of Answer and Counterclaim, Respondent requested: compensatory damages in an amount not less than \$1,000,000.00 and as established at the hearing; dismissal with prejudice of all of the UBS Claimants' claims on each of the Notes and Deferred Cash Awards ("DCAs"), including interest, expenses and attorneys' fees; all costs, fees and expenses, including reasonable attorneys' fees and expert witness fees in amounts to be submitted in accordance with applicable law, in connection with his defense against the UBS Claimants' claim; issuance of an Order of Expungement of the UBS Claimants' false and defamatory Form U5; such other and further relief, including punitive damages, as the Panel deemed appropriate based on the testimony and evidence at the hearing, including a separate award of damages in the amount of \$5,000,000.00 for the personal and reputational damage caused to Respondent by the UBS Claimants; and further relief in the form of an Award that clarifies that any offset damages, prorated damages, including punitive damages, awarded to Respondent can be netted against the UBS Claimants' claims, and not requiring separate payment to Respondent by the UBS Claimants.

In their Answer to Counterclaim, Claimants requested an Award: denying Respondent's Counterclaim and entering judgement in favor of the UBS Claimants; granting the UBS Claimants the damages sought in their Statement of Claim, including compensatory damages, interest, costs and attorneys' fees; and granting such other and further relief as the Panel deemed just and equitable.

OTHER ISSUES CONSIDERED AND DECIDED

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

On or about February 22, 2019, Respondent filed a Stipulation in which the parties indicated, among other things, that they had settled the monetary damages claims set forth in the Statement of Claim and Counterclaim and dismissed all claims with prejudice, except for Respondent [REDACTED] claim for expungement of his Form U5.

On or about February 22, 2019, Respondent filed an Unopposed Motion for Voluntary Reduction of Panel in which he requested that the Panel be reduced to the Chair alone for the purposes of hearing Respondent's request for expungement of his Form U5. On

or about March 12, 2019, the Panel issued an Order denying Respondent's Motion for Voluntary Reduction of Panel.

The Panel conducted a recorded telephonic hearing on May 13, 2019, so the parties could present oral argument and evidence on Respondent [REDACTED] request for U5 expungement.

The parties present at the hearing have 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 hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel recommends the expungement of the "YES" answers to questions 7B and 7F(1) of the Form U5 filed by UBS Financial Services, Inc. on October 31, 2016 from the registration records for Respondent [REDACTED] (CRD# [REDACTED] maintained by the Central Registration Depository based on the defamatory nature of the information. The Panel recommends that the answers be changed to "NO" and the accompanying Disclosure Reporting Pages be deleted in their entirety. These recommendations shall apply to all previous and subsequent disclosures concerning this event, including but not limited to, the Form U4 filed on November 21, 2016 by Spire Securities, LLC.

The Form U5 is not automatically amended to include the changes indicated above. Respondent [REDACTED] must forward a copy of this award to FINRA's Registration and Disclosure Department for review.

The Panel provided the following statement:

FINRA Rule 8312(d)(1) states FINRA shall not release potentially defamatory information about a broker. Subsection d(4) includes the reason(s) for termination as an example of potentially defamatory information that should not be released. Here, Respondent [REDACTED] undisputed testimony shows the deleterious effect that Claimant UBS Financial Services, Inc.'s release of the reasons for his termination already has had on his reputation, his ability to find work, and on his financial situation. There was no opposing, or indeed any, testimony to show that expungement would outweigh investor protection concerns. To the contrary, undisputed evidence shows that Respondent [REDACTED] has not harmed any investors and any investor concerns were minimal.

FEES

Pursuant to the Code of Arbitration Procedure, the following fees are assessed:

Filing Fees

FINRA Office of Dispute Resolution assessed a filing fee* for each claim:

Initial Claim Filing Fee	= \$2,550.00
Counterclaim Filing Fee	= \$2,250.00

**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 a party, Claimant UBS Financial Services, Inc. is assessed the following:

Member Surcharge	= \$2,475.00
Member Process Fee	= \$5,075.00

Postponement Fees

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

June 19 – 21, 2018, postponement jointly requested	= \$1,500.00
December 18 – 21, 2018, postponement jointly requested	WAIVED

Total Postponement Fees	= \$1,500.00
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The Panel has assessed the entire \$1,500.00 adjournment fee to Respondent.

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 a single arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: November 8, 2019	1 session

Two (2) pre-hearing sessions with the Panel @ \$1,300.00/session	= \$2,600.00
Pre-hearing conferences: August 2, 2017	1 session
July 2, 2018	1 session

One (1) hearing session on expungement request @ \$1,300.00/session	= \$1,300.00
Hearing Date: May 13, 2019	1 session

Total Hearing Session Fees	= \$4,350.00
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The Panel has assessed \$975.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$3,975.00 of the hearing session fees to Respondent.

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

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ARBITRATION PANEL

Mona Koppel Mitnick	-	Public Arbitrator, Presiding Chairperson
Jeri Kaylene Somers	-	Public Arbitrator
Robert Michael O'Brien	-	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

Mona Mitnick

Mona Koppel Mitnick
Public Arbitrator, Presiding Chairperson

June 18, 2019

Signature Date

Jeri Kaylene Somers
Public Arbitrator

Signature Date

Robert Michael O'Brien
Non-Public Arbitrator

Signature Date

6/18/2019

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

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Public Arbitrator, Presiding Chairperson



Jeri Kaylene Somers
Public Arbitrator

Signature Date



Signature Date

Robert Michael O'Brien
Non-Public Arbitrator

Signature Date

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FINRA Office of Dispute Resolution
Arbitration No. [REDACTED]
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Mona Koppel Mitnick
Public Arbitrator, Presiding Chairperson

Signature Date

Jeri Kaylene Somers
Public Arbitrator

Signature Date



Robert Michael O'Brien
Non-Public Arbitrator

6/17/2019
Signature Date

6/18/2019

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