

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimants

Dr. Luis E. Cummings AKA Luis E. Cummings-Carrero; Oriental Bank & Trust as TTEE for LECC Living & Grantor Trust; and Caribbean Anesthesia Society

Case Number: 15-00709

vs.

Respondents

UBS Financial Services Inc. of Puerto Rico and
UBS Financial Services Inc.

Hearing Site: San Juan, Puerto Rico

Nature of the Dispute: Customers vs. Members

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimant Dr. Luis E. Cummings-Carrero (“Dr. Cummings”): Luis E. Miñana, Esq., Espada, Miñana & Pedrosa Law Offices, PSC, San Juan, Puerto Rico.

For Claimant Caribbean Anesthesia Society: Eric M. Quetglas, Esq., Quetglas Law, LLC, Guaynabo, Puerto Rico.

For Claimant Oriental Bank & Trust as TTEE for LECC Living & Grantor Trust (“Oriental Bank & Trust”): Pedro Hernandez-Freire, Esq., Delgado Fernandez, LLC, San Juan, Puerto Rico.

For Respondent UBS Financial Services Inc. (“UBSFS”): Lawrence E. Fenster, Esq. and Richard Szuch, Esq., Bressler, Amery & Ross, P.C., New York, New York.

For Respondent UBS Financial Services Inc. of Puerto Rico (“UBSPR”): Jaime E. Toro-Monserrate, Esq., Toro, Colón, Mullet, Rivera & Sifre, PSC, San Juan, Puerto Rico.

CASE INFORMATION

Statement of Claim filed on or about: March 29, 2015.

Dr. Luis E. Cummings-Carrero signed the Submission Agreement: March 29, 2015.

Oriental Bank & Trust as TTEE for LECC Living & Grantor Trust signed the Submission Agreement: March 29, 2015.

Caribbean Anesthesia Society signed the Submission Agreement: March 29, 2015.

Statement of Answer filed by Respondents UBSFS and UBSPR on or about: August 14, 2015.

UBS Financial Services Inc. signed the Submission Agreement: April 2, 2015.
UBS Financial Services Inc. of Puerto Rico signed the Submission Agreement: August 17, 2015.

Preliminary Request for Attorneys' Fees and Memorandum in Support Thereof ("Request for Attorneys' Fees") filed by Claimants on or about: January 24, 2017.
Preliminary Request for Statutory Costs and Memorandum in Support Thereof ("Request for Statutory Costs") filed by Claimants on or about: January 24, 2017.
Opposition to Claimants' Requests for Attorneys' Fees and Statutory Costs filed by Respondents on or about: February 6, 2017.

Motion to Dismiss Claimant Oriental Bank & Trust and All Damages Related to the Trust Account filed by Respondents on or about: January 30, 2017.
Response to Respondents' Motion to Dismiss Trust and Request for Leave to Amend the Statement of Claim filed by Claimants on or about: February 3, 2017.

Motion in Limine to Exclude Regulatory Settlements filed by Respondents on or about: February 8, 2017.
Response to Respondents' Motion in Limine to Exclude Fact Findings of Regulatory Settlements filed on or about: February 9, 2017.

CASE SUMMARY

Claimants asserted the following causes of action: Securities Act violations; violation of the Puerto Rico Securities Act - 10 L.P.R.A. §890; and fault, fraud, deceit, recklessness and negligence. The causes of action relate to Claimants' investment in Puerto Rico closed-end funds ("CEFs") and Puerto Rico bonds; loans obtained against the Puerto Rico CEFs and Puerto Rico Bonds; and the use of lines of credit to purchase additional Puerto Rico bonds and CEFs.

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

RELIEF REQUESTED

In the Statement of Claim, Claimants requested: compensatory damages in the amount of no less than \$4,927,369.00 for Dr. Cummings, \$530,000.00 for Oriental Bank & Trust as TTEE for LECC Living & Grantor Trust and \$637,651.00 for Caribbean Anesthesia Society; interest; rescission of contract; unspecified disgorgement and reimbursement of commissions and revenue generated by Respondents; costs and expenses, including the filing fees and arbitration fees and expenses; attorneys' fees; unspecified punitive damages; any amounts required to liquidate the loan payable balance in the accounts; that the Panel declare void the Puerto Rico securities purchases and line of credit loans, and order Respondents to reimburse to Claimants all monies that they paid for the securities and loans, including for all related fees, commissions, and loan interest, and that a finding is entered that Claimants owe nothing to Respondents; and such other and further relief as the Panel deemed just and appropriate.

At the close of the hearing, Claimants Dr. Cummings and Caribbean Anesthesia Society

requested compensatory damages in the amount of \$4,423,175.60.

In the Statement of Answer, Respondents requested: Claimants' claims be dismissed in their entirety, with prejudice; FINRA fees and costs; expungement of this matter from Central Registration Depository ("CRD") records of relevant and former UBS employees, including non-party Luis Garcia; and for 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 January 24, 2017, Claimants filed a Request for Attorneys' Fees and Request for Statutory Costs seeking an award of reasonable attorneys' fees equal to 33% of their compensatory awards and an award of statutory costs related to the expert witness and hearing transcript expenses that were necessarily incurred by them for successful prosecution of this action. In their response to Claimants' requests, Respondents filed an Opposition in which they asserted that Claimants' requests should be denied and the parties should bear their own fees, costs and expenses in litigation. At the evidentiary hearing, the Panel heard oral argument on this issue and ruled on Claimants' Request for Attorneys' Fees and Request for Statutory Costs as set forth in the Award section below.

On or about January 30, 2017, Respondents filed a Motion to Dismiss Claimant Oriental Bank & Trust and All Damages Related to the Trust Account ("Motion to Dismiss") in which they asserted that failure to comply with a discovery order is grounds for dismissal; the Claim is deficient as it related to Claimant Oriental Bank & Trust; and that Claimant Dr. Cummings cannot bring a claim on behalf of Claimant Oriental Bank & Trust. In their response to the Motion to Dismiss, Claimants asserted, among other things, that Claimant Oriental Bank & Trust is a Claimant party to this action; the discovery issues raised in the Motion were waived by Respondents; and all trust documents have been produced, or made available to the Respondents. Claimants also requested leave to amend the Statement of Claim, to name the beneficiaries as Claimants on behalf of the Trust, and Oriental Bank as a Respondent.

On or about February 1, 2017, counsel for Oriental Bank & Trust notified FINRA Office of Dispute Resolution that Oriental Bank & Trust did not: 1) authorize the filing of any claim against UBS in regard to the LECC Living & Grantor Trust; 2) authorize Claimants' attorneys in this matter to file any claim on its behalf, as trustee of the LECC Living & Grantor Trust; nor 3) authorize Claimant Dr. Cummings, nor anyone else, to file a Statement of Claim or execute the Submission Agreement on its behalf. This submission was forwarded to the Panel for its consideration.

On or about February 6, 2017, following a recorded telephonic conference with the parties on Respondents' Motion to Dismiss, the Panel found Claimant Oriental Bank & Trust had not authorized a claim to be filed on its behalf and issued an Order that granted Respondents' Motion. Accordingly, Claimant Oriental Bank & Trust was dismissed without prejudice from this arbitration. The Panel also deferred ruling on Claimants' request for leave to amend the Statement of Claim to add parties. The

request to amend was addressed at the outset of the evidentiary hearings on February 13, 2017, and Claimants' request was denied.

On or about February 8, 2017, Respondents filed a Motion in Limine to Exclude Regulatory Settlements in which they asserted that: 1) the regulatory settlements are inadmissible because they contain unadjudicated findings that UBS did not admit; 2) the regulatory settlements are not an indication of guilt; 3) admitting the regulatory settlements would undermine strong public policy in favor of settlement agreements; and 4) introduction of the regulatory settlements would be unfairly prejudicial to Respondents. In their Response, Claimants asserted that: 1) the Motion should be denied on its face because it is untimely; 2) admissibility of the regulatory factual findings is relevant to show that Respondents engaged in the widespread mismarketing of the Puerto Rico securities; 3) the factual findings and conclusions from the investigations of the regulatory agencies are relevant and admissible evidence; 4) Respondents did not admit the regulators' findings and that those findings were not adjudicated by a tribunal does make them inadmissible; 5) Respondents' entry into the settlement is not being offered as evidence of any guilt by the Respondents; 6) the admissibility of the findings of fact of the regulatory agencies cannot undermine public policy; and 7) the probative value of the regulatory agencies' findings of fact outweighs any undue prejudice. At the outset of the evidentiary hearing, the Panel heard oral argument from the parties and thereafter granted the Motion.

In their Statement of Answer, Respondents requested expungement of any record of this arbitration from the CRD records of relevant and former UBS employees, including non-party Luis Garcia (CRD# 2295856). Inasmuch as Respondents did not reiterate this request for expungement at the evidentiary hearing, the Panel deemed Respondents' request to be withdrawn, and did not make any determinations with respect thereto.

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. Claimant Caribbean Anesthesia Society's claims are denied.
2. Respondents are jointly and severally liable for and shall pay to Claimant Dr. Cummings the sum of \$3,919,359.00 in compensatory damages.
3. Respondents are jointly and severally liable for and shall pay to Claimant Dr. Cummings the sum of \$61,499.00 in costs.
4. Respondents are jointly and severally liable for and shall pay to Claimant Dr. Cummings the sum of \$442,318.00 in attorneys' fees pursuant to Puerto Rico statutes and case law. The attorneys' fees are to be divided equally between co-counsel for Claimant Dr. Cummings (Luis E. Miñana, Esq. and Eric M. Quetglas, Esq.).

5. In identified accounts (#XX XXX72 02, #XX XXX17 02 and #XX XXX16), as well as in any and all other aggregated accounts subject to the final arbitration hearing, any purchases, solicited or unsolicited, made by Respondents through their agents, for, by or on behalf of Claimants Dr. Cummings and Caribbean Anesthesia Society of CEFs and Puerto Rico bonds after December 13, 2013, and held in the accounts of the names of the Claimants Dr. Cummings and Caribbean Anesthesia Society at Respondents' institutions are to be set aside, rescinded and declared null and void.
6. Any loans, debts, promissory notes, contracts indebteding, Claimants Dr. Cummings and Caribbean Anesthesia Society required by Respondents to make said purchases by REPO or margin calls, solicited or unsolicited, of CEFs and Puerto Rico bonds in the accounts identified, and other accounts subject to the arbitration, are rescinded and declared null and void. Claimants Dr. Cummings and Caribbean Anesthesia Society are released from all liability past, present and future from said REPOs, margin calls, purchases and loans and all debt attached to those accounts and purchases. Any accounts controlled by Claimants Dr. Cummings and Caribbean Anesthesia Society in Respondents' institutions, if any, as of February 24, 2017, are to be ceded and surrendered by Claimants Dr. Cummings and Caribbean Anesthesia Society to Respondents.
7. Any and all relief not specifically addressed herein, including Claimants' request for punitive damages, is denied.

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	= \$ 2,250.00
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**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 parties, Respondents UBSFS and UBSPR are each assessed the following:

Respondent UBSFS

Member Surcharge	= \$ 3,600.00
Member Process Fee	= \$ 6,800.00

Respondent UBSPR

Member Surcharge	= \$ 3,600.00
Member Process Fee	= \$ 6,800.00

Contested Motion for Issuance of Subpoena Fee

Fees apply for each decision on a contested motion for the issuance of a subpoena.

One (1) Decision on a contested motion for the issuance of a subpoena	
One (1) arbitrator @ \$250.00	= \$ 250.00

Total Contested Motion for Issuance of Subpoena Fee	= \$ 250.00
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The Panel has assessed \$125.00 of the contested motion for issuance of subpoenas fees jointly and severally to Claimants Dr. Cummings and Caribbean Anesthesia Society.

The Panel has assessed \$125.00 of the contested motion for issuance of subpoenas fees jointly and severally to Respondents.

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/session	= \$ 450.00
Pre-hearing conference: November 18, 2016	1 session

Three (3) pre-hearing sessions with the Panel @ \$1,500.00/session	= \$ 4,500.00
Pre-hearing conferences: August 17, 2015	1 session
September 11, 2015	1 session
February 6, 2017	1 session

Twenty (24) hearing sessions @ \$1,500.00/session	= \$36,000.00
Hearing Dates: February 13, 2017	2 sessions
February 14, 2017	2 sessions
February 15, 2017	3 sessions
February 16, 2017	2 sessions
February 17, 2017	2 sessions
February 20, 2017	2 sessions
February 21, 2017	2 sessions
February 22, 2017	3 sessions
February 23, 2017	3 sessions
February 24, 2017	3 sessions

Total Hearing Session Fees	= \$40,950.00
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The Panel has assessed \$21,225.00 of the hearing session fees jointly and severally to Claimants Dr. Cummings and Caribbean Anesthesia Society.

The Panel has assessed \$19,725.00 of the hearing session fees jointly and severally to Respondents.

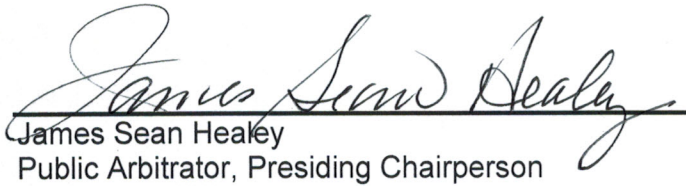
All balances are payable to FINRA Office of Dispute Resolution and are due upon receipt.

ARBITRATION PANEL

James Sean Healey	-	Public Arbitrator, Presiding Chairperson
Richard E. Lauziere	-	Public Arbitrator
Robert Lawrence Ostrov	-	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



James Sean Healey
Public Arbitrator, Presiding Chairperson

3/28/2017
Signature Date

Richard E. Lauziere
Public Arbitrator

Signature Date

Dissenting Arbitrator's Signature

Robert Lawrence Ostrov
Public Arbitrator

Signature Date

March 29, 2017

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

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Public Arbitrator

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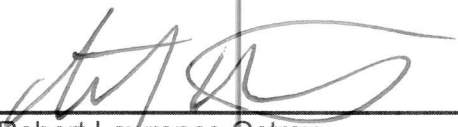
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Public Arbitrator

Signature Date

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Robert Lawrence Ostrov
Public Arbitrator



Signature Date

March 29, 2017

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