

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimants

Victor M. Gomez, Jr. and Socorro Horta, in their respective personal capacities and as representatives of the conjugal partnership constituted by them
Madeline Gomez-Horta
Inversiones VM Gomez, LLC

Case Number: 13-02866

vs.

Respondents

UBS Financial Services Incorporated
of Puerto Rico
UBS Financial Services, Inc.
Jose G. Ramirez (also known as "Whopper")
Carlos Freire-Borges
UBS Bank USA
Carlos Ubinas
Doel Garcia
Ramiro Colon

Hearing Site: San Juan, Puerto

Nature of the Dispute: Customers vs. Members, Associated Persons and Non-Member

This case was decided by a majority-public panel.

REPRESENTATION OF PARTIES

For Claimants Victor M. Gomez, Jr. and Socorro Horta, in their respective personal capacities and as representatives of the conjugal partnership constituted by them, Madeline Gomez-Horta and Inversiones VM Gomez, LLC: Harold D. Vicente-Colon, Esq., Vicente & Cuebas, San Juan, Puerto Rico, Francisco Pujol, Esq., Francisco Pujol Law Office, PSC, San Juan, Puerto Rico and Lloyd R. Schwed, Esq., Schwed Kahle & Kress, P.A., Palm Beach Gardens, Florida.

For Respondents UBS Financial Services Incorporated of Puerto Rico ("UBSPR") and UBS Financial Services Inc. ("UBS"): Peter J. Macdonald, Esq. and Ross Firsenbaum, Esq., WilmerHale, New York, New York and Roberto C. Quinones-Rivera, Esq., McConnell Valdes LLC, San Juan, Puerto Rico.

For Respondent Jose G. Ramirez (also known as "Whopper") ("Ramirez"): Guillermo Ramos-Luina, Esq., San Juan, Puerto Rico.

For Respondent Carlos Freire-Borges ("Freire"): Heriberto Lopez, Esq., Melendez Torres Law, San Juan, Puerto Rico.

For Respondents Carlos Ubinas ("Ubinas") and Doel Garcia ("Garcia"): Ubaldo M. Fernandez-Barrera, Esq. and Salvador J. Antonetti-Stutts, Esq, O'Neill & Borges LLC, San Juan, Puerto Rico.

For Respondent Ramiro Colon ("Colon"): Jaime E. Toro-Monserrate, Esq., Toro, Colon, Mullet, Rivera & Sifre, PSC, San Juan, Puerto Rico.

Respondent UBS Bank USA did not file a Statement of Answer or execute a Submission Agreement.

CASE INFORMATION

Statement of Claim filed on or about: September 30, 2013.
Victor M. Gomez, Jr. signed the Submission Agreement: September 30, 2013.
Socorro Horta signed the Submission Agreement: September 30, 2013.
Madeline Gomez-Horta signed the Submission Agreement: September 30, 2013.
Inversiones VM Gomez, LLC signed the Submission Agreement: September 30, 2013.

Statement of Answer and Counterstatement of Claim filed by Respondents UBSPR, UBS, Freire, Ubinas, Garcia and Colon on or about: January 14, 2014.
UBS signed the Submission Agreement: November 14, 2013.
UBSPR signed the Submission Agreement: February 26, 2014.
Ubinas signed the Submission Agreement: February 4, 2014.
Garcia signed the Submission Agreement: February 21, 2014.
Colon signed the Submission Agreement: February 25, 2014.
Freire signed the Submission Agreement: February 25, 2014.

Response to Statement of Claim filed by Respondent Ramirez on or about: April 8, 2014.
Ramirez signed the Submission Agreement: February 28, 2014.

Amended Statement of Answer and Counterstatement of Claim filed by Respondents UBSPR, UBS, Freire, Ubinas, Garcia and Colon on or about: May 5, 2014.

Answer to [Amended] Counterclaim filed by Claimants on or about: May 8, 2014.

Motion for Summary Award filed by Claimants on or about: July 31, 2014.
Motion to Bar Defenses and Facts at the Hearings filed by Claimants on or about: July 31, 2014.
Opposition to Motion for Summary Award filed by Respondent Ramirez on or about: August 29, 2014.
Opposition to Claimants' Motion to Bar Defenses and Facts at the Hearings and Motion for Summary Award filed by Respondents UBSPR, UBS, Freire, Ubinas, Garcia and Colon on or about: August 29, 2014.
Reply to Opposition to Claimants' Motion to Bar Defenses and Facts at the Hearings and Motion for Summary Award filed by Claimants on or about: September 3, 2014.

Motion to Amend Statement of Claim filed by Claimants on or about: September 10, 2014.

Notice of Assent to Amendment of Claim filed by Respondents UBSPR, UBS, Freire, Ubinas, Garcia and Colon on or about: October 16, 2014.
Amendment to Statement of Claim filed by Claimants on or about: November 10, 2014.

Second Amended Statement of Answer and Counterstatement of Claim filed by Respondents UBSPR and UBS on or about: December 4, 2014.

UBS Bank USA ("UBS Bank") did not file a Statement of Answer nor sign the Submission Agreement.

CASE SUMMARY

In their Statement of Claim, as amended, Claimants asserted the following causes of action: (1) violations of Section 10(b) of the Securities Exchange Act of 1934, SEC Rule 10b-5, NYSE and FINRA rules, and the securities laws and other laws and regulations of Puerto Rico; (2) securities fraud; (3) violation of Article 1802 of the Civil Code of Puerto Rico 31 Laws of Puerto Rico Annotated [L.P.R.A.] Section 5141; (4) breach of contract; and (5) breach of policies, law(s), rules, regulations and norms for the financial protection of elderly or handicapped persons. The causes of action relate to, among other things, Claimants' investment in Puerto Rico closed-end mutual funds (the "Funds") concentrated in Puerto Rico bonds and the use of loan proceeds to purchase securities.

Unless specifically admitted in his Response to Statement of Claim, Respondent Ramirez denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in their Answer to Statement of Claim, as amended, Respondents UBSPR, UBS, Freire, Ubinas, Colon and Garcia denied the allegations made in the Statement of Claim, as amended, and asserted various affirmative defenses.

In its Counterstatement of Claim, Respondent UBSPR asserted the following causes of action: breach of contract; unjust enrichment; and account stated. The causes of action relate to Claimants' alleged failure to pay Respondent UBSPR monies due pursuant to a Credit Line Agreement.

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

RELIEF REQUESTED

In the Statement of Claim, as amended, Claimants requested: compensatory damages in the amount of \$22,872,627.17 plus legal interest thereon from the date of filing of the Statement of Claim through the date of full payment; disgorgement of commissions, interest and/or service-for-loan fees; rescission; urgent injunctive relief prohibiting Respondents from making collection efforts of alleged debit or loan balances other than through these arbitration proceedings and from destroying or disposing of any documents and/or evidence related to Claimants' accounts and the transactions

described in the Statement of Claim, including electronic and digital records; punitive damages of not less than \$5,000,000.00; costs and expenses, including filing fees, consulting fees and arbitration fees; attorneys' fees; and any amounts needed to liquidate the debit or loan-payable balances in Claimants' accounts after reimbursement to Claimants of their net worth in the accounts of as of July 31, 2013.

In the Amended Statement of Claim, Claimants further requested: reimbursement of any and all proceeds resulting from the partial or total liquidation of shares of UBS Funds in Claimants' accounts and credited to Claimants' alleged loans originated by Respondent UBS Bank and transferred to Respondent UBSPR; reimbursement of any and all dividends earned by shares of UBS Funds in Claimants' accounts and used to reduce the aforesaid loan balances; an order prohibiting Respondents from taking any further action to collect the aforesaid loans; and an order declaring null and void ab initio any and all loans made to Claimants by Respondent UBS Bank, transferred to Respondent UBSPR, and supposedly collateralized by the prohibited and illicit pledge and hypothecation of shares of UBS Funds in favor of Respondent UBS Bank.

In his Response to Statement of Claim, Respondent Ramirez requested that the Statement of Claim be dismissed.

In their Statement of Answer and Counterstatement of Claim, as amended: Respondents UBSPR, UBS, Freire, Ubinas, Garcia and Colon requested: (1) that Claimants take nothing by her claims and that her claims be dismissed in their entirety; (2) assessment of all fees and costs against Claimants; (3) expungement of any record of this arbitration from the Central Registration Depository ("CRD") records of the affected individual Respondents; (4) damages in excess of \$5,000,000.00 sought by Respondent UBSPR in its Counterstatement of Claim, as amended; and (5) such other and further relief as deemed just and equitable by the Panel.

In their Answer to Counterstatement of Claim, Claimants requested dismissal, denial and/or rejection of the Counterstatement of Claim.

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 10, 2014, prior to the appearance by Respondent UBS Bank in this matter, Claimants filed a Notice of Voluntary Withdrawal of Claims as to Respondent UBS Bank, which was clarified to be without prejudice on November 18, 2016. Therefore, the Panel made no determinations with respect to the claims asserted against Respondent UBS Bank.

On or about July 31, 2014, Claimants filed a Motion to Bar Defenses and Facts at the Hearings in which Claimants asserted that the Panel should bar Respondents from presenting at the hearings all of the defenses and facts known by Respondents but deliberately omitted by them in their respective Answers to the Statement of Claim.

On or about July 31, 2014, Claimants filed a Motion for Summary Award in which Claimants asserted that the Panel should issue a Summary Award in their favor on all of their claims against Respondents because, among other things, Respondents failed to provide specific responses and defenses to the Statement of Claim and omitted from their respective Answers crucial and significant facts known to them when their Answers were filed.

In his Opposition to the Motion for Summary Award, Respondent Ramirez asserted that the Panel may not draw adverse inferences against him based on his invocation of Fifth Amendment rights.

Respondent Ramirez did not file a response to Claimants' Motion to Bar Defenses and Facts at the Hearings.

In their Opposition to the Motion to Bar Defenses and Facts at the Hearings and Motion for Summary Award, Respondents UBSPR, UBS, Freire, Ubinas, Colon and Garcia asserted that: (1) FINRA rules do not permit a Summary Award on the pleadings; (2) their Answers comply with FINRA rules; and (3) Respondent Ramirez's assertion of the Fifth Amendment does not prevent Respondents UBSPR, UBS, Freire, Ubinas, Colon and Garcia from proving their defenses, nor is it a basis to draw an adverse inference against them or to grant Claimants a Summary Award.

In Claimants' Reply to Respondents UBSPR, UBS, Freire, Ubinas, Colon and Garcia's Opposition to the Motion to Bar Defenses and Facts at the Hearings and Motion for Summary Award, Claimants asserted that: (1) the Panel is empowered to enter a Summary Award against all Respondents; (2) FINRA Rule 12308(b) requires respondents in an arbitration proceeding to specify any relevant fact that is known to them at the time their Answer is filed, which Respondents in this case failed to do; and (3) Respondent Ramirez's assertion of the Fifth Amendment does prevent Respondents UBSPR, UBS, Freire, Ubinas, Colon and Garcia from proving their defenses because under FINRA Rule 2111, it is the broker (not the broker-dealer) who must have a reasonable basis for believing that a recommendation is suitable and no one besides Respondent Ramirez has personal knowledge of what due diligence was performed by Respondent Ramirez before making that recommendation; thus, there are no other witnesses or evidence that may support a defense against, at least, the unsuitability claim.

On or about October 10, 2014, following a telephonic conference with the parties, the Panel issued an Order that denied Claimants' Motion for Summary Award and denied without prejudice Claimants' Motion to Bar Defenses and Facts at the Hearings.

On or about September 10, 2014, Claimants filed a Motion to Amend the Statement of Claim for the purpose of, among other things, including additional information regarding allegations contained in the Statement of Claim. In response, Respondents UBSPR, UBS, Freire, Ubinas, Colon and Garcia filed a Notice of Assent to Amendment. Respondent Ramirez did not file a response. On or about November 14, 2014, the Panel issued an Order that granted Claimants' Motion to Amend the Statement of Claim.

On or about May 29, 2015, Claimants filed a Dismissal without Prejudice of Claims against Certain Individuals [Respondents Freire, Ubinas and Garcia], to which Respondents Freire, Ubinas and Garcia agreed.

On or about June 1, 2015, Claimants filed a Dismissal without Prejudice of Claims against Respondent Colon, to which Respondent Colon agreed.

In their Statement of Answer, Respondents UBSPR, UBS, Freire, Ubinas, Garcia and Colon requested expungement of any record of this arbitration from the CRD records of the affected individual Respondents. Inasmuch as they did not reiterate this request for expungement during the evidentiary hearing, the Panel deemed the request to be withdrawn without prejudice, 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. Respondents UBS and UBSPR are jointly and severally liable and shall pay to Claimant Madeline Gomez-Horta compensatory damages in the amount of \$1,130,000.00, plus interest pursuant to the Puerto Rico Uniform Securities Act at the rate of 4.25% per annum accruing from the date of service of the Award through payment of the Award in full.
2. Respondents UBS and UBSPR are jointly and severally liable and shall pay to Claimant Victor M. Gomez, Jr. compensatory damages in the amount of \$8,000,000.00, plus interest pursuant to the Puerto Rico Uniform Securities Act at the rate of 4.25% per annum accruing from the date of service of the Award through payment of the Award in full.
3. Respondents UBS and UBSPR are jointly and severally liable and shall pay to Claimant Socorro Horta compensatory damages in the amount of \$500,000.00, plus interest pursuant to the Puerto Rico Uniform Securities Act at the rate of 4.25% per annum accruing from the date of service of the Award through payment of the Award in full.
4. Inasmuch as Claimants did not make a request or present expert testimony regarding damages on behalf of Claimant Inversiones VM Gomez, LLC during the evidentiary hearing, Claimant Inversiones VM Gomez, LLC's claims are denied with prejudice.
5. During the evidentiary hearing, based upon Respondent Ramirez's representation that he would plead the fifth on all questions asked, Claimants withdrew their claims against Ramirez with prejudice.

6. Respondents UBS and UBSPR are jointly and severally liable and shall pay to Claimant Madeline Gomez-Horta punitive damages in the amount of \$282,850.00. Punitive damages are awarded pursuant to the following case law: (1) Mastrobuono v. Shearson Lehman Hutton, Inc., 514 U.S. 52 (1995); and (2) based on the reckless indifference of Respondents UBS and UBSPR in this matter, Exxon Shipping Company v. Baker, 554 U.S. 471, 493-494 (2008).
7. Respondents UBS and UBSPR are jointly and severally liable and shall pay to Claimant Victor M. Gomez, Jr. punitive damages in the amount of \$3,500,000.00. Punitive damages are awarded pursuant to the following case law: (1) Mastrobuono v. Shearson Lehman Hutton, Inc., 514 U.S. 52 (1995); and (2) based on the reckless indifference of Respondents UBS and UBSPR in this matter, Exxon Shipping Company v. Baker, 554 U.S. 471, 493-494 (2008).
8. Respondents UBS and UBSPR are jointly and severally liable and shall pay to Claimant Socorro Horta punitive damages in the amount of \$217,500.00. Punitive damages are awarded pursuant to the following case law: (1) Mastrobuono v. Shearson Lehman Hutton, Inc., 514 U.S. 52 (1995); and (2) based on the reckless indifference of Respondents UBS and UBSPR in this matter, Exxon Shipping Company v. Baker, 554 U.S. 471, 493-494 (2008).
9. Pursuant to Section 890(a)(2) of the Puerto Rico Uniform Securities Act, Respondents UBS and UBSPR are jointly and severally liable and shall pay to Claimant Madeline Gomez-Horta attorneys' fees in the amount of \$466,240.50, representing one-third of the total compensatory and punitive damages awarded to her.
10. Pursuant to Section 890(a)(2) of the Puerto Rico Uniform Securities Act, Respondents UBS and UBSPR are jointly and severally liable and shall pay to Claimant Victor M. Gomez, Jr. attorneys' fees in the amount of \$3,795,000.00, representing one-third of the total compensatory and punitive damages awarded to him.
11. Pursuant to Section 890(a)(2) of the Puerto Rico Uniform Securities Act, Respondents UBS and UBSPR are jointly and severally liable and shall pay to Claimant Socorro Horta attorneys' fees in the amount of \$236,775.00, representing one-third of the total compensatory and punitive damages awarded to her.
12. Respondents UBS and UBSPR are jointly and severally liable and shall reimburse Claimants Victor M. Gomez, Jr., Madeline Gomez-Horta and Socorro Horta in the amount of \$600.00, representing the non-refundable portion of the claim filing fee previously paid by Claimants to FINRA Office of Dispute Resolution.
13. Respondents UBS and UBSPR are jointly and severally liable and shall reimburse Claimants Victor M. Gomez, Jr., Madeline Gomez-Horta and Socorro Horta in the amount of \$85,950.27, representing costs incurred by Claimants in connection with this matter.
14. Respondent UBSPR's Counterclaim is denied in its entirety.

15. Any and all relief not specifically addressed herein 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	= \$ 1,800.00
Counterclaim Filing Fee	= \$ 3,700.00

**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 parties, Respondents UBS, UBSPR and UBS Bank are each assessed the following:

UBS	
Member Surcharge	= \$3,750.00
Pre-Hearing Processing Fee	= \$ 750.00
Hearing Processing Fee	= \$5,500.00

UBSPR	
Member Surcharge	= \$3,750.00
Pre-Hearing Processing Fee	= \$ 750.00
Hearing Processing Fee	= \$5,500.00

UBS Bank	
Member Surcharge	= \$3,750.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

June 8-12, 2015, and June 15-19, 2015, adjournment by Claimants = \$1,200.00

Total Adjournment Fees = \$1,200.00

The Panel has assessed the total \$1,200.00 adjournment fee jointly and severally to Claimants.

Last Minute Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

June 8-12, 2015, and June 15-19, 2015, adjournment by Claimants = \$ 300.00

Total Last Minute Cancellation Fees = \$ 300.00

The Panel has assessed the total \$300.00 last minute cancellation fee jointly and severally to Claimants.

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:

Two (2) pre-hearing sessions with a single arbitrator @ \$450.00/session = \$ 900.00
Pre-hearing conferences: March 31, 2015 1 session
June 2, 2015 1 session

Four (4) pre-hearing sessions with the Panel @ \$1,200.00/session = \$ 4,800.00
Pre-hearing conferences: June 25, 2014 1 session
October 9, 2014 1 session
June 4, 2015 1 session
June 8, 2015 1 session

Twenty-three (23) hearing sessions @ \$1,200.00/session = \$27,600.00
Hearing Dates: November 29, 2016 2 sessions
November 30, 2016 3 sessions
December 1, 2016 2 sessions
December 2, 2016 3 sessions
December 5, 2016 3 sessions
December 6, 2016 2 sessions
December 7, 2016 3 sessions
December 8, 2016 3 sessions
December 9, 2016 2 sessions

Total Hearing Session Fees = \$33,300.00

The Panel has assessed the total hearing session fees of \$33,300.00 jointly and severally to Respondents UBS and UBSPR.

ARBITRATION PANEL

Jeffrey R. Roth	-	Public Arbitrator, Presiding Chairperson
Ivy Robin Ginsberg	-	Public Arbitrator
S. William Gersten	-	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

_____	_____
_____	_____
_____	_____
Jeffrey R. Roth Public Arbitrator, Presiding Chairperson Jeffrey R. Roth /s	Signature Date 1/11/17
_____	_____
_____	_____
Ivy Robin Ginsberg Public Arbitrator	Signature Date
_____	_____
_____	_____
S. William Gersten Non-Public Arbitrator	Signature Date
_____	_____

1/11/17
Date of Service (For FINRA Office of Dispute Resolution use only)

ARBITRATION PANEL


Jeffrey R. Roth	-	Public Arbitrator, Presiding Chairperson
Ivy Robin Ginsberg	-	Public Arbitrator
S. William Gersten	-	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

Jeffrey R. Roth
Public Arbitrator, Presiding Chairperson

Signature Date



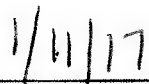
Ivy Robin Ginsberg
Public Arbitrator



Signature Date

S. William Gersten
Non-Public Arbitrator

Signature Date



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

ARBITRATION PANEL

Jeffrey R. Roth	-	Public Arbitrator, Presiding Chairperson
Ivy Robin Ginsberg	-	Public Arbitrator
S. William Gersten	-	Non-Public Arbitrator

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Concurring Arbitrators' Signatures

Jeffrey R. Roth
Public Arbitrator, Presiding Chairperson

Signature Date

Ivy Robin Ginsberg
Public Arbitrator

Signature Date

S. William Gersten
Non-Public Arbitrator

Signature Date

1/11/17
Date of Service (For FINRA Office of Dispute Resolution use only)