

**Award**  
**FINRA Office of Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimant  
Salvador Matus, Trustee of the Fideicomiso Santa  
Barbara Trust

Case Number: 13-03717

vs.

Respondents  
UBS Financial Services, Inc.  
UBS Financial Services Incorporated of Puerto  
Rico

Hearing Site: Miami, Florida

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Nature of the Dispute: Customer vs. Members

This case was decided by an all-public panel.

**REPRESENTATION OF PARTIES**

For Claimant Salvador Matus, Trustee of the Fideicomiso Santa Barbara Trust: Randall C. Place, Esq. and Sara Hanley, Esq., Law Offices of Place & Hanley, LLC, Naples, Florida, and Darren C. Blum, Esq., Law Offices of Darren C. Blum, PA.

For Respondents UBS Financial Services, Inc. ("UBS") and UBS Financial Services Incorporated of Puerto Rico ("UBSPR"): Ross Firsenbaum, Esq. and Christopher Bouchoux, Esq., Wilmer Cutler Pickering Hale and Dorr LLP, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: December 19, 2013.  
Salvador Matus, Trustee for the Fideicomiso Santa Barbara Trust signed the Submission Agreement: December 16, 2013.

Amended Statement of Claim filed on or about: March 28, 2014.

Statement of Answer filed by Respondents on or about: May 12, 2014.  
UBS signed the Submission Agreement: January 7, 2014.  
UBSPR signed the Submission Agreement: January 24, 2017.

Motion to Postpone and Motion for Sanctions against Respondents ("Motion for Sanctions") filed by Claimant on or about: December 2, 2014.

### **CASE SUMMARY**

In the Statement of Claim, as amended, Claimant asserted the following causes of action: breach of fiduciary duty; negligence; unsuitability; common law fraud; breach of contract; violations of the Florida Securities Statute (Chapter 517); and failure to supervise. The causes of action relate to, among other things, Claimant's investments in Puerto Rico closed-end mutual funds concentrated in Puerto Rico bonds.

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, as amended, Claimant requested: unspecified compensatory damages in an amount of at least \$600,000.00 according to proof to be offered at the final hearing; interest at the legal rate from the date of purchase or reasonable market return; rescission; attorneys' fees; punitive damages; costs; and for such other relief as was just and proper.

In the Statement of Answer, Respondents requested: dismissal of Claimant's claims in their entirety with prejudice; costs; a recommendation of expungement of all references to this arbitration from the Central Registration Depository ("CRD") records of any financial advisors or other UBS personnel identified in the Statement of Claim or otherwise affected by the Statement of Claim; and 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 March 28, 2014, prior to Panel appointment, Claimant filed an Amended Statement of Claim to supplement its statement of fact and causes of action.

On or about December 2, 2014, Claimant filed a Motion for Sanctions in which it requested the postponement of the January 26-30, 2015, evidentiary hearings based on, among other things, Respondent's alleged failure to produce presumptively discoverable documents, as provided for under the FINRA Discovery Guide. In their Response, Respondents argued, among other things, that the evidentiary hearings should not be postponed and that Claimant had declined to enter into a reasonable confidentiality agreement, as it related to discovery of certain documents and that it had already produced an index and documents to Claimant. On or about December 15, 2014, the Panel entered an Order in which it granted Claimant's request for postponement and did not address the request for sanctions. Inasmuch as Claimant did not reiterate its Motion for Sanctions during the evidentiary hearing, the Panel deemed Claimant's request for sanctions to be withdrawn.

In addition, Respondents did not reiterate their request for expungement on behalf of any financial advisors or other UBS personnel identified in the Statement of Claim, as amended, or otherwise affected by the Statement of Claim, as amended, during the evidentiary hearing. Accordingly, the Panel deemed Respondents' request to be withdrawn.

The parties 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 recorded in-person hearing, 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 for failure to supervise (negligence), common law fraud, breach of contract and breach of fiduciary duty, and shall pay to Claimant the sum of \$339,000.00 in compensatory damages.
2. The Panel did not find liability on Claimant's claim for unsuitability.
3. Respondents are jointly and severally liable and shall pay to Claimant interest on the above-stated sum at the Florida statutory rate from August 23, 2013, until fully paid to Claimant.
4. Respondents are jointly and severally liable and shall pay to Claimant the sum of \$24,500.00 in costs for expert witnesses.
5. Pursuant to Florida Statute Chapter 517, the Panel makes a prevailing party finding for attorneys' fees in favor of Claimant, the amount of which is to be determined by a court of competent jurisdiction.
6. Respondents are jointly and severally liable and shall reimburse to Claimant the sum of \$375.00, representing the non-refundable portion of the claim filing fee previously paid to FINRA Office of Dispute Resolution by Claimant.
7. Any and all claims for relief not specifically addressed herein, including Claimant's requests for rescission and punitive damages, are 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	= \$ 1,575.00
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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 UBS and UBSPR are each assessed the following:

#### **For UBS:**

Member Surcharge	= \$ 2,250.00
Pre-Hearing Processing Fee	= \$ 750.00
Hearing Processing Fee	= \$ 4,000.00

#### **For UBSPR:**

Member Surcharge	= \$ 2,250.00
Pre-Hearing Processing Fee	= \$ 750.00
Hearing Processing Fee	= \$ 4,000.00

### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

January 26-30, 2015, joint adjournment request by the parties	= \$ 1,200.00
February 8-13, 2016, adjournment requested by Claimant	= \$ 1,200.00
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Total Adjournment Fees	= \$ 2,400.00

The Panel has assessed \$1,800.00 of the adjournment fees to Claimant.

The Panel has assessed \$600.00 of the adjournment fees to Respondents, jointly and severally.

### **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:

Four (4) pre-hearing sessions with a single arbitrator @ \$450.00/session	= \$ 1,800.00
Pre-hearing conferences:	
December 4, 2014	1 session
March 2, 2015	1 session
March 19, 2015	1 session
February 10, 2016	1 session
Two (2) pre-hearing sessions with the Panel @ \$ 1,200.00/session	= \$ 2,400.00
Pre-hearing conferences:	
May 30, 2014	1 session
January 28, 2015	1 session

Twenty-two (22) hearing sessions @ \$1,200.00/session		= \$26,400.00
Hearing Dates:	January 11, 2017	2 sessions
	January 12, 2017	3 sessions
	January 13, 2017	3 sessions
	January 16, 2017	3 sessions
	January 17, 2017	3 sessions
	January 18, 2017	3 sessions
	January 19, 2017	3 sessions
	January 20, 2017	2 sessions
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Total Hearing Session Fees		= \$30,600.00

The Panel has assessed the total hearing session fees of \$30,600.00 to Respondents, jointly and severally.

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

**ARBITRATION PANEL**

Carl Henry Perdue	-	Public Arbitrator, Presiding Chairperson
Jerrold Levine	-	Public Arbitrator
Richard S. Herman	-	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**

/s/ Carl Henry Perdue  
Carl Henry Perdue  
Public Arbitrator, Presiding Chairperson

2/14/17  
Signature Date

Jerrold Levine  
Jerrold Levine  
Public Arbitrator

Signature Date

Richard S. Herman  
Richard S. Herman  
Public Arbitrator

Signature Date

FEBRUARY 14, 2017

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

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Signature Date

  
\_\_\_\_\_  
Richard S. Herman  
Public Arbitrator

13 Feb 2017  
\_\_\_\_\_  
Signature Date

FEBRUARY 14, 2017

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