

Award
FINRA Dispute Resolution

In the Matter of the Arbitration Between:

Claimant
Christel Barie Bengoa Lopez

Case Number: 14-01541

vs.

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

Hearing Site: San Juan, Puerto Rico

Nature of the Dispute: Customer vs. Members

This case was decided by a majority-public panel.

REPRESENTATION OF PARTIES

For Claimant Christel Barie Bengoa Lopez: Robert Wayne Pearce, Esq. and Julio Cayere Quidgley, Esq., The Law Offices of Robert Wayne Pearce, Boca Raton, Florida.

For Respondents UBS Financial Services Incorporated of Puerto Rico ("UBSPR") and UBS Financial Services, Inc. ("UBS"): Joshua D. Jones, Esq. and Gregg M. McCormick, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama, and Luis D. Dávila-Pernas, Esq., McConnell Valdes LLC, Hato Rey, Puerto Rico.

CASE INFORMATION

Statement of Claim filed on or about: May 15, 2014.

Christel Barie Bengoa Lopez signed the Submission Agreement: April 12, 2014.

Statement of Answer filed by Respondent UBSPR on or about: August 22, 2014.

UBSPR signed the Submission Agreement: July 16, 2014.

Amended Statement of Claim filed on or about: April 6, 2015.

Christel Barie Bengoa Lopez signed an Amended Submission Agreement: March 26, 2015.

Answer to Amended Statement of Claim filed by Respondents on or about: May 6, 2015.

UBS signed the Submission Agreement: January 7, 2016.

Motion in Limine to Exclude Regulatory Settlements filed by Respondents on or about: January 5, 2016.

Response to Motion in Limine to Exclude Regulatory Settlements filed by Claimant on or about: January 11, 2016.

Reply in Support of Motion in Limine to Exclude Regulatory Settlements filed by Respondents on or about: January 18, 2016.

CASE SUMMARY

Claimant asserted the following causes of action in the Statement of Claim, as amended: violations of the FINRA Code of Conduct and Uniform Securities Act of Puerto Rico; common law fraud; constructive fraud; negligent misrepresentation; breach of fiduciary duty; breach of contract; negligent management; negligent supervision of its employees; and fraudulent concealment of its misconduct. The causes of action relate to Claimant's investments in several UBSPR closed-end bond funds in a leveraged UBSPR account.

Unless specifically admitted in their Answer to the Statement of Claim, as amended, 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: rescission of the investments still held in Claimant's account and/or, alternatively, compensatory damages in an amount to be proven at hearing; cancellation of all outstanding credit lines and loan balances disbursed by UBS Bank (USA) and later assigned to Respondent UBSPR; full restitution of all principal and interest paid to UBS Bank (USA) and Respondent UBSPR in connection with the credit lines and loans; lost opportunity damages; pre-judgment interest from the time the claim accrued; punitive damages; and all other costs, including legal fees, incurred as a result of this proceeding.

At the conclusion of the hearing, Claimant entered into evidence a damage analysis which clarified that Claimant requested compensatory and/or rescissionary damages in excess of \$2,000,000.00.

In their Answer to the Statement of Claim, as amended, Respondents requested: that Claimant take nothing by her claims and that her claims be dismissed in their entirety, with prejudice; assessment of all FINRA fees and costs against Claimant; 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 deemed just and equitable by the Panel.

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 April 6, 2015, the parties jointly agreed to allow Claimant to file an Amended Statement of Claim naming UBS as an additional Respondent in this matter, which the Panel accepted into the record.

Respondents filed a Motion in Limine to Exclude Regulatory Settlements in which they asserted that: the regulatory settlements are inadmissible because they contain unadjudicated findings that Respondents did not admit; the regulatory settlements are not an indication of guilt; admitting the regulatory settlements would undermine strong public policy in favor of settlement agreements; and what little probative value the regulatory settlements may have is outweighed by their clear prejudice. In their Response, Claimant asserted that: FINRA proceedings are not governed by either state or federal rules of evidence and, even if they were, those rules do not support the exclusion of the regulatory settlements in this case; Respondents' admission or denial of the regulatory findings does not change their admissibility, only the weight to be given to them; and the evidence at issue is not unfairly prejudicial to Respondents. In their Reply, Respondents asserted that the legal authority cited by Claimant in its Response does not lead to the conclusion that an arbitration panel cannot use the Federal Rules of Evidence to inform a decision, and does not support Claimant's contention that the regulatory settlements are admissible in this matter. At the outset of the evidentiary hearing, the Panel heard oral argument from the parties and thereafter denied the Motion.

Inasmuch as 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, 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 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 are jointly and severally liable for and shall pay to Claimant compensatory damages in the amount of \$1,142,000.00 plus interest at the rate of 4.25% per annum, accruing from the date of service of the Award until the Award is paid in full.
2. Pursuant to the Puerto Rico Uniform Securities Act, 10 L.P.R.A. Sec. 890(a)(2), Respondents are jointly and severally liable for and shall reimburse Claimant the sum of \$249,212.00, representing attorneys' fees incurred by Claimant in this matter.
3. Respondents are jointly and severally liable and shall reimburse Claimant the sum of \$29,580.00, representing costs incurred by Claimant in this matter.
4. Respondents are jointly and severally liable and shall reimburse Claimant the sum of \$28,873.00, representing expert witness fees incurred by Claimant this matter.
5. Any and all relief not specifically addressed herein, including Claimant's request for punitive damages, is denied.

FEES

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

Respondent UBSPR	
Member Surcharge	= \$ 1,500.00
Pre-Hearing Processing Fee	= \$ 750.00
Hearing Processing Fee	= \$ 2,200.00

Respondent UBS	
Member Surcharge	= \$ 1,500.00
Pre-Hearing Processing Fee	= \$ 750.00
Hearing Processing Fee	= \$ 2,200.00

Discovery-Related Motion Fees

Fees apply for each decision rendered on a discovery-related motion.

Three (3) Decisions on discovery-related motions on the papers
with (1) one arbitrator @ \$200.00/motion = \$ 600.00

Claimant submitted one (1) discovery-related motion
Respondents submitted two (2) discovery-related motions

Total Discovery-Related Motion Fees = \$ 600.00

The Panel has assessed \$120.00 of the discovery-related motion fees to Claimant.

The Panel has assessed \$480.00 of the discovery-related motion 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:

Two (2) Pre-hearing sessions with the Panel @ \$1,000.00/session = \$ 2,000.00

Pre-hearing conferences: October 30, 2014 1 session
 November 16, 2015 1 session

Seventeen (17) Hearing sessions @ \$1,000.00/session		= \$17,000.00
Hearing Dates:	January 25, 2016	2 sessions
	January 26, 2016	2 sessions
	January 27, 2016	2 sessions
	January 28, 2016	2 sessions
	January 29, 2016	2 sessions
	February 2, 2016	2 sessions
	February 3, 2016	2 sessions
	February 4, 2016	2 sessions
	February 5, 2016	1 session

Total Hearing Session Fees = \$19,000.00

The Panel has waived the \$1,000.00 fee in connection with the pre-hearing conference conducted on November 16, 2015.

The Panel has assessed \$3,600.00 of the hearing session fees to Claimant.

The Panel has assessed \$14,400.00 of the hearing session fees jointly and severally to Respondents.

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

ARBITRATION PANEL

Lawrence R. Maxwell, Jr.	-	Public Arbitrator, Presiding Chairperson
Kenneth R. Starr	-	Public Arbitrator
Thomas M. Campbell, Jr.	-	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



Lawrence R. Maxwell, Jr.
Public Arbitrator, Presiding Chairperson

2/17/16

Signature Date

Kenneth R. Starr
Public Arbitrator

Signature Date

Thomas M. Campbell, Jr.
Non-Public Arbitrator

Signature Date

2/18/16


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

ARBITRATION PANEL

Lawrence R. Maxwell, Jr.	-	Public Arbitrator, Presiding Chairperson
Kenneth R. Starr	-	Public Arbitrator
Thomas M. Campbell, Jr.	-	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

_____ Lawrence R. Maxwell, Jr. Public Arbitrator, Presiding Chairperson	_____ Signature Date
	2/17/16

_____ Kenneth R. Starr Public Arbitrator	_____ Signature Date
--	-------------------------

_____ Thomas M. Campbell, Jr. Non-Public Arbitrator	_____ Signature Date
---	-------------------------

2/18/16
Date of Service (For FINRA Office of Dispute Resolution use only)

ARBITRATION PANEL

Lawrence R. Maxwell, Jr.	-	Public Arbitrator, Presiding Chairperson
Kenneth R. Gahr	-	Public Arbitrator
Thomas M. Campbell, Jr.	-	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.

Canceled Arbitrator's Signatures

Lawrence R. Maxwell, Jr.
Public Arbitrator, Presiding Chairperson

Signature Date

Kenneth R. Gahr
Public Arbitrator

Signature Date

Thomas M. Campbell, Jr.
Non-Public Arbitrator

Signature Date

Thomas M. Campbell, Jr. 2/17/16

2/18/16

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