

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimants

Jeff Misner and Karen Misner, as Trustees of  
the Jeff and Karen Misner Revocable Trust

Case Number: 20-03978

vs.

Respondent

UBS Financial Services Inc.

Hearing Site: Atlanta, Georgia

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Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

Nature of the Dispute: Customers vs. Member

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Jeff Misner and Karen Misner, as Trustees of the Jeff and Karen Misner Revocable Trust (“Claimants”): Stefan Apotheker, Esq., Erez Law, PLLC, Miami, Florida.

For Respondent UBS Financial Services Inc. (“Respondent”): Rebecca K. Lindahl, Esq., Katten Muchin Rosenman LLP, Charlotte, North Carolina.

**CASE INFORMATION**

Statement of Claim filed on or about: December 7, 2020.

Claimants signed the Submission Agreement: December 4, 2020.

Statement of Answer filed on or about: January 26, 2021.

Respondent signed the Submission Agreement: December 7, 2020.

**CASE SUMMARY**

In the Statement of Claim, Claimants asserted the following causes of action: breach of fiduciary duty, negligence, negligent supervision, fraud, breach of contract, violation of Section 10(b) of the Securities Exchange Act and Rule 10b-5 of the Securities and Exchange Commission, violation of the Texas Securities Act, and violation of the Georgia Securities Act. The causes of action related to Claimants’ allegation that Respondent, through its agents, recommended a

speculative managed account options strategy, the Yield Enhancement Strategy (“YES”), which was unsuitable for Claimants.

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

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested damages between \$500,000.00 and \$1,000,000.00, statutory damages, rescission, punitive damages, interest, costs, attorneys’ fees, and such other and further relief as the Panel deems just and proper.

In the Statement of Answer, Respondent requested an award against Claimants dismissing the Statement of Claim in its entirety and with prejudice and such other and further relief as the Arbitrators deem just and proper.

At the hearing, Claimants requested an award of compensatory damages in the amount of \$749,555.00, costs of \$41,475.00, and attorneys’ fees in an amount equal to one-third of compensatory damages.

### **OTHER ISSUES CONSIDERED AND DECIDED**

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

The Award in this matter may be executed in counterpart copies.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and any post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable for and shall pay to Claimants the sum of \$475,482.00 in compensatory damages.
2. Respondent is liable for and shall pay to Claimants the sum of \$500,000.00 in punitive damages pursuant to Tex. Civ. Prac. & Rem. Code §41.003.
3. Respondent is liable for and shall pay to Claimants the sum of \$325,161.00 in attorneys’ fees pursuant to Tex. Civ. Prac. & Rem. Code § 38.001.
4. Respondent is liable for and shall pay to Claimants the sum of \$41,475.00 in costs.
5. Any and all claims for relief not specifically addressed herein, including any requests for treble damages, are denied.

## FEES

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

### Filing Fees

FINRA Dispute Resolution Services assessed a filing fee\* for each claim:

Initial Claim Filing Fee = \$ 1,725.00

*\*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, Respondent is assessed the following:

Member Surcharge = \$ 2,475.00

Member Process Fee = \$ 5,075.00

### Late Pre-Hearing Cancellation Fees

Fees apply when a pre-hearing conference is cancelled within three business days of the scheduled conference:

April 14, 2022, cancellation requested by Claimants = \$ 100.00

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Total Late Pre-Hearing Cancellation Fees = \$ 100.00

The Panel has assessed \$50.00 of the late pre-hearing cancellation fees jointly and severally to Claimants.

The Panel has assessed \$50.00 of the late pre-hearing cancellation fees 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), which lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) pre-hearing sessions with the Panel @ \$1,300.00/session = \$ 2,600.00

Pre-Hearing Conferences: March 30, 2021 1 session  
May 27, 2022 1 session

Twenty-one (21) hearing sessions @ \$1,300.00/session = \$ 27,300.00

Hearings: June 6, 2022 2 sessions  
June 7, 2022 2 sessions  
June 8, 2022 3 sessions  
June 9, 2022 3 sessions  
June 10, 2022 3 sessions  
June 13, 2022 3 sessions  
June 14, 2022 3 sessions

June 15, 2022

2 sessions

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Total Hearing Session Fees = \$ 29,900.00

The Panel has assessed \$14,950.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$14,950.00 of the hearing session fees to Respondent.

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

**ARBITRATION PANEL**

J.G. Long	-	Public Arbitrator, Presiding Chairperson
Thomas James Hirsch	-	Public Arbitrator
Jeffrey Alperin	-	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**

***J.G. Long***

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J.G. Long  
Public Arbitrator, Presiding Chairperson

**06/27/2022**

\_\_\_\_\_  
Signature Date

***Thomas James Hirsch***

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Thomas James Hirsch  
Public Arbitrator

**06/28/2022**

\_\_\_\_\_  
Signature Date

**Dissenting Arbitrator's Signature**

***Jeffrey Alperin***

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Jeffrey Alperin  
Public Arbitrator

**06/27/2022**

\_\_\_\_\_  
Signature Date

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June 28, 2022

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