

Award
FINRA Dispute Resolution

In the Matter of the Arbitration Between:

Claimants

Lymarie Rivera Diaz
Nelson Ramos Irizarry

Case Number: 14-00442

vs.

Respondents

Carlos Freire-Borges
Ramiro Luis Colon, III
Doel Rafael Garcia-Romero
Carlos Verner Ubinas-Taylor
Jose Gabriel Ramirez, Jr.
UBS Financial Services Inc.
UBS Financial Services Inc. of Puerto Rico

Hearing Site: San Juan, Puerto Rico

Nature of the Dispute: Customers vs. Associated Persons and Members

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimants Lymarie Rivera Diaz ("Diaz") and Nelson Ramos Irizarry ("Irizarry"): Harold D. Vicente Colon, Esq., Vicente & Cuebas, San Juan, Puerto Rico and Francisco Pujol, Esq., Pujol Law Office, PSC, San Juan, Puerto Rico.

For Respondent Carlos Freire-Borges ("Freire"): Juan Fontanez, Esq., Meléndez Torres Law, PSC, San Juan, Puerto Rico.

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

For Respondents Doel Rafael Garcia-Romero ("Garcia") and Carlos Verner Ubinas-Taylor ("Ubinas"): Mauricio O. Muñiz-Luciano, Esq., O'Neill & Borges LLC, San Juan, Puerto Rico.

For Respondent Jose Gabriel Ramirez, Jr. ("Ramirez"): Guillermo Ramos-Luiña, Esq., Santurce, Puerto Rico.

For Respondents UBS Financial Services Inc. ("UBS") and UBS Financial Services Inc. of Puerto Rico ("UBSPR"): Peter G. Neiman, Esq., Wilmer Cutler Pickering Hale and Dorr LLP, New York, New York and Roberto C. Quinones-Rivera, Esq., McConnell Valdés LLC, San Juan, Puerto Rico.

CASE INFORMATION

Statement of Claim filed on or about: February 10, 2014.
Lymarie Rivera Diaz signed the Submission Agreement: February 10, 2014.
Nelson Ramos Irizarry signed the Submission Agreement: February 10, 2014.

Statement of Answer and Counterstatement of Claim filed by Respondents UBS, UBSPR, Freire, Garcia, Ubinas and Colon on or about: May 14, 2014.
Carlos Freire-Borges signed the Submission Agreement: March 24, 2014.
Ramiro Luis Colon, III signed the Submission Agreement: March 24, 2014.
Doel Rafael Garcia-Romero signed the Submission Agreement: March 5, 2014.
Carlos Verner Ubinas-Taylor signed the Submission Agreement: March 25, 2014.
UBS Financial Services Inc. signed the Submission Agreement: February 27, 2014.
UBS Financial Services Inc. of Puerto Rico signed the Submission Agreement: March 21, 2014.

Response to Statement of Claim filed by Respondent Ramirez on or about: June 3, 2014.
Jose Gabriel Ramirez, Jr. signed the Submission Agreement: May 30, 2014.

Claimants' Motion to Bar Defenses and Facts at the Hearings Pursuant to FINRA Rule 12308(b) ("Motion to Bar") filed on or about: August 27, 2014.
Claimants' Motion for Summary Award filed on or about: August 27, 2014.
Opposition to Claimants' Motion for Summary Award filed by Respondent Ramirez on or about: September 24, 2014.
Respondents UBS, UBSPR, Freire, Ubinas, Garcia and Colon's Opposition to Claimants' Motion to Bar and Motion for Summary Award filed on or about: September 26, 2014.
Claimants' Reply to Respondent Ramirez's Opposition to Claimants' Motion for Summary Award filed on or about: September 26, 2014.
Claimants' Reply to Respondents UBS, UBSPR, Freire, Ubinas, Garcia and Colon's Opposition to Claimants' Motion to Bar and Motion for Summary Award filed on or about: September 30, 2014.

Claimants' Motion to Amend Statement of Claim in Accordance with FINRA Rules 12309(b) and 12503 filed on or about: October 1, 2014.

Amendment to Statement of Claim filed by Claimants on or about: October 21, 2014.

Amended Statement of Answer and Counterstatement of Claim filed by Respondents UBS, UBSPR, Freire, Garcia, Ubinas and Colon on or about: November 17, 2014.

Respondents UBS and UBSPR's Motion to Enforce FINRA Rules 12209 and 12204 ("Motion to Enforce") filed on or about: February 15, 2016.
Claimants' Response to Respondents UBS and UBSPR's Motion to Enforce filed on or about: February 22, 2016.
Respondents UBS and UBSPR's Reply in Support of the Motion to Enforce filed on or about: February 25, 2016.

CASE SUMMARY

Claimants asserted the following causes of action: (1) violations of Section 10(b) of the Securities Exchange Act, Rule 10b-5 of the Securities Exchange Commission, 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.] §5141; and (4) breach of contract. The causes of action relate to, among other things, Claimants' investments in Puerto Rico closed-end mutual funds concentrated in Puerto Rico bonds and the use of loan proceeds to purchase securities.

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

In its Counterstatement of Claim, as amended, 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 repay sums due Respondent UBSPR pursuant to credit line agreements.

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.

RELIEF REQUESTED

In the Statement of Claim, as amended, Claimants requested: losses of approximately \$4,774,788.30, pre-judgment legal interest from the date of filing of the Statement of Claim; attorneys' fees; filing and consultant's fees; arbitration costs and expenses; any amounts needed to liquidate the debit or loan payable balances after reimbursement to Claimants of their net worth in their accounts as of July 31, 2013; punitive or extended damages of not less than \$4,000,000.00; disgorgement of commissions, markups, markdowns and/or trading profits and/or interests and/or other fees; reimbursement of all losses or, in the alternative, rescission of all unauthorized transactions and other proper remedies, including, without limitation, a reasonable return on all assets deposited by Claimants; 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 loan(s) originated by Respondent UBS Bank and transferred to Respondent UBSPR; reimbursement of any and all dividends earned by the shares of UBS funds in Claimants' account(s) and used to reduce the aforesaid loan balances; an order prohibiting Respondents from taking any further action to collect the aforesaid loans; an order from the Panel 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; and 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 but not limited to electronic and digital

records.

In the Statement of Answer and Counterclaim, as amended, Respondents UBS, UBSPR, Freire, Garcia, Ubinas and Colon requested: dismissal of the Statement of Claim, as amended, with prejudice; that the Panel award Respondent UBSPR damages in excess of \$100,000.00 on its Counterclaim; that all FINRA fees and costs be assessed against Claimants; that the Panel make specific findings to allow the expungement of any record of this matter from the Central Registration Depository ("CRD") records of the affected individual Respondents; and such other and further relief the Panel deemed just and equitable.

In his Response to Statement of Claim, Respondent Ramirez requested dismissal of the Statement of Claim.

OTHER ISSUES CONSIDERED AND DECIDED

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

In their Motion to Bar, Claimants requested that the Panel bar Respondents from presenting at the hearing all of the defenses and facts known by Respondents and deliberately omitted by them from their Answers. In their Motion for Summary Award, Claimants requested a summary award in their favor on all of their claims due to Respondents' failure to provide specific defenses and responses to the Statement of Claim.

In his Opposition to Claimants' Motion for Summary Award, Respondent Ramirez asserted: that he has invoked his Fifth Amendment right against self-incrimination; and certain conditions, not present in this case, must be met before any adverse inferences may be derived due to the invocation of Fifth Amendment right.

In their Reply to Respondent Ramirez's Opposition to Claimants' Motion for Summary Award, Claimants asserted: that the conditions necessary to draw adverse inferences are present in this case; and not allowing negative inferences to be drawn poses substantial problems for Claimants who are deprived of a source of information that might conceivably be determinative.

In their Opposition to the Motion to Bar and Motion for Summary Award, Respondents UBS, UBSPR, Freire, Ubinas, Garcia and Colon asserted the following: no FINRA rule allows for a summary award on the pleadings; FINRA rules do not support Claimants' Motion to Bar in this case because the Answer is detailed and provides Claimants with sufficient notice of the defenses that will be raised at the final hearing; and Respondent Ramirez's assertion of his Fifth Amendment right is not a basis to grant a summary award.

On or about October 13, 2014, the Panel conducted a pre-hearing conference for the purpose of hearing oral argument on Claimants' Motion to Bar and Motion for Summary Award. Thereafter, on October 14, 2014, the Panel issued an Order which denied Claimants' Motion to Bar and Motion for Summary Award.

In their Motion to Amend, Claimants sought to include information related to the pledge or hypothecation of shares of UBS funds. Respondents did not file a response to the Motion. On or about October 21, 2014, the Panel issued an Order which granted Claimants' Motion to Amend.

On or about September 21, 2015, Claimants dismissed their claims against Respondents Ramirez, Garcia, Freire, Colon and Ubinas with prejudice. Accordingly, the Panel made no determinations with respect to the claims against Respondents Ramirez, Garcia, Freire, Colon and Ubinas contained in the Statement of Claim, as amended.

In their Motion to Enforce, Respondents UBS and UBSPR asserted, among other things, that: Claimants intend to pursue the legality and enforceability of loans they took from UBS Bank USA; those claims are identical to those presented in a putative class action brought by Claimants in Puerto Rico state court; and Rules 12209 and 12204 of the Code of Arbitration Procedure ("Code") expressly prohibit such double-dipping and require Claimants to either dismiss themselves from the class action or dismiss from the arbitration claims covered by the class action. In their Response to the Motion to Enforce, Claimants asserted, among other things, that: Rule 12204 of the Code is a procedural rule which can be waived by the parties; Respondents UBS and UBSPR's failure to timely raise the issue constitutes a waiver of their right to complain about a violation of Rule 12204; and Claimants' loan invalidity claims do not precisely track the claims they allege in the class action. In their Reply in Support of the Motion to Enforce, Respondents UBS and UBSPR asserted: their motion was timely filed; and the effect of the remedy that Claimants seek in both forums is the same. During the evidentiary hearing, the Panel granted the Motion to Enforce and Claimants were precluded from offering testimony or argument concerning a defense to the Respondents' counterclaim based on the contention that the loans were void under Puerto Rico law. The Panel ruled that the issue was pending before the Puerto Rico court in which Claimants sought a judgment determining that the loans they obtained through Respondents' affiliate, UBS Bank USA were void and would not be considered in the arbitration for reasons of comity and Claimants' election of remedies.

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 UBS and UBSPR are jointly and severally liable and shall pay to Claimants compensatory damages in the sum of \$1,159,699.00, pre-judgment interest specifically denied.
2. Respondents UBS and UBSPR are jointly and severally liable and shall pay to Claimants expert witness fees in the sum of \$40,000.00.
3. Respondents UBS and UBSPR are jointly and severally liable and shall pay to

Claimants the sum of \$600.00 representing reimbursement of the non-refundable portion of the claim filing fee previously paid by Claimants to FINRA's Office of Dispute Resolution.

4. Claimants are jointly and severally liable and shall pay to Respondent UBSPR compensatory damages in the sum of \$156,433.00. This amount is to be used as a setoff against the sum Respondent UBSPR owes Claimants.
5. The Panel determined that since Respondents UBS, UBSPR, Freire, Garcia, Ubinas and Colon did not pursue their requests for expungement of affected individual Respondents, the Panel deemed the expungement requests to be withdrawn.
6. Any and all relief not specifically addressed herein, including Claimants' requests for injunctive relief, punitive damages and attorneys' fees, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial Claim Filing Fee	= \$ 1,800.00
Counterclaim Filing Fee	= \$ 2,125.00

**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 and UBSPR are assessed the following:

Respondent UBS:

Member Surcharge	= \$ 3,350.00
Pre-Hearing Processing Fee	= \$ 750.00
Hearing Processing Fee	= \$ 5,500.00

Respondent UBSPR:

Member Surcharge	= \$ 3,350.00
Pre-Hearing Processing Fee	= \$ 750.00
Hearing Processing Fee	= \$ 5,500.00

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 @ \$450.00/session = \$ 450.00

Pre-hearing conference:	April 28, 2015	1 session	
Two (2) Pre-hearing sessions with the Panel @ \$1,200.00/session			= \$ 2,400.00
Pre-hearing conferences:	July 31, 2014	1 session	
	October 13, 2014	1 session	
Twenty-six (26) Hearing sessions @ \$1,200.00/session			=\$31,200.00
Hearing Dates:	November 9, 2015	3 sessions	
	November 10, 2015	2 sessions	
	November 11, 2015	3 sessions	
	November 12, 2015	3 sessions	
	November 13, 2015	3 sessions	
	February 29, 2016	2 sessions	
	March 1, 2016	3 sessions	
	March 2, 2016	2 sessions	
	March 3, 2016	3 sessions	
	March 4, 2016	2 sessions	
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Total Hearing Session Fees			= \$34,050.00

The Panel has assessed \$1,800.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$32,250.00 of the hearing session fees jointly and severally to Respondents UBS and UBSPR.

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

ARBITRATION PANEL

Allan R. Lazor	-	Public Arbitrator, Presiding Chairperson
Edward R. Niederriter	-	Public Arbitrator
Andrea Bailey	-	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



Allan R. Lazor
Public Arbitrator, Presiding Chairperson

March 18, 20176

Signature Date

Edward R. Niederriter
Public Arbitrator

Signature Date

Andrea Bailey
Public Arbitrator

Signature Date

3/21/16

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

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Public Arbitrator



Signature Date

Andrea Bailey
Public Arbitrator

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