

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

The David and Heather Weir Family Trust

Case Number: 20-01960

vs.

Respondent

UBS Financial Services Inc.

Hearing Site: Albuquerque, New Mexico

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: Customer vs. Member

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant The David and Heather Weir Family Trust: Jeffrey B. Kaplan, Esq., Dimond Kaplan & Rothstein, P.A., Miami, Florida.

For Respondent UBS Financial Services Inc.: Charles A. DeVore, Esq., Zachary Schmitz, Esq., and Shannon Gross, Esq., Katten Muchin Rosenman LLP, Chicago, Illinois.

CASE INFORMATION

Statement of Claim filed on or about: June 22, 2020.

Claimant signed the Submission Agreement: June 23, 2020.

Statement of Answer filed by Respondent on or about: September 11, 2020.

Respondent signed the Submission Agreement: September 11, 2020.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: fraud; misrepresentation; unsuitable product; breach of fiduciary duty; negligence; failure to supervise; and breach of contract under the federal securities laws, FINRA regulations, applicable New Mexico state securities laws and applicable common law. The causes of action relate to a

managed-account, options strategy product from Respondent called the Yield Enhancement Strategy ("YES").

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, Claimant requested:

1. Equitable relief of rescission of all trading losses, mandates and disgorgement of all margin interest and fees received by Respondent;
2. Compensatory damages of approximately \$1,000,000.00, including recovery of all trading losses, margin interest and fees received by Respondent and well-managed account damages;
3. Recovery of pre- and post-award interest, costs, expenses, attorneys' fees, expert fees, and forum fees of this arbitration; and
4. Punitive damages in such amount as this Panel deems appropriate and just to punish and deter Respondent from any future similar conduct.

In the Statement of Answer, Respondent requested:

1. The Statement of Claim be dismissed in its entirety and with prejudice;
2. Expungement of this matter from the Central Registration Depository ("CRD") records of Unnamed Party William Montgomery Cerf, and any and all associated persons who may be affected by this claim; and
3. Such other and further relief as the Panel deems just and proper.

At the hearing, Claimant requested:

1. Compensatory damages in the amount of \$1,109,484.73;
2. Attorneys' fees in the amount of \$369,828.24;
3. Punitive damages in the amount of \$3,328,454.20;
4. Filing costs in the amount of \$1,725.00; and
5. Expert witness fees in the amount of \$26,147.50.

OTHER ISSUES CONSIDERED AND DECIDED

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

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 Claimant the sum of \$1,109,484.73 in compensatory damages, which includes \$933,092.00 for out-of-pocket loss and \$176,392.73 of prejudgment interest.

2. Respondent is liable for and shall pay to Claimant the sum of \$26,147.50 in costs related to expert witness fees.
3. Respondent is liable for and shall pay to Claimant the sum of \$311,030.67 in attorneys' fees based on contingent fee retainer and pursuant to New Mexico Statutes Annotated 1978, § 58-13C-509.
4. Respondent is liable for and shall pay to Claimant \$425.00 as reimbursement for the non-refundable filing fee previously paid to FINRA Dispute Resolution Services.
5. Respondent's request for expungement on behalf of Unnamed Party William Montgomery Cerf (CRD Number 2269462) of the above-captioned arbitration (Occurrence Number 2083057) from registration records maintained by the CRD is denied.
6. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, are denied.

FEES

Pursuant to the Code of Arbitration Procedure ("Code"), 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
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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 that employed the associated person at the time of the event 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:

February 1, 2022, cancellation requested by parties	=\$ 100.00
April 5, 2022, cancellation requested by parties	=\$ 300.00
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Total Late Pre-Hearing Cancellation Fees	=\$ 400.00

The Panel has assessed \$150.00 of the late pre-hearing cancellation fees to Claimant.

The Panel has assessed \$150.00 of the late pre-hearing cancellation fees to Respondent.

The Panel has waived \$100.00 of the late pre-hearing cancellation fees.

Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

May 16-20, 2022, postponement requested by parties = \$ WAIVED

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:

One (1) pre-hearing session with the Panel @ \$1,300.00/session = \$ 1,300.00
Pre-Hearing Conference: October 12, 2020 1 session

Nine (9) hearing sessions @ \$1,300.00/session = \$ 11,700.00
Hearings: May 9, 2022 2 sessions
May 10, 2022 2 sessions
May 11, 2022 2 sessions
May 12, 2022 2 sessions
May 13, 2022 1 session

Total Hearing Session Fees = \$ 13,000.00

The Panel has assessed the total hearing session fees to Respondent.

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

ARBITRATION PANEL

Helen Marinak Blohm	-	Public Arbitrator, Presiding Chairperson
Paul H. Lamboley	-	Public Arbitrator
Harvey W Gordon	-	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

Helen Marinak Blohm

Helen Marinak Blohm
Public Arbitrator, Presiding Chairperson

05/24/2022

Signature Date

Paul H. Lamboley

Paul H. Lamboley
Public Arbitrator

05/25/2022

Signature Date

Harvey W Gordon

Harvey W Gordon
Public Arbitrator

05/25/2022

Signature Date

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May 25, 2022

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