

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Joel D. Zychick, Trustee of the GST Trust
U/W Irving Siegel and Joel D. Zychick,
Trustee of the QTIP Trust U/W Irving Siegel

Case Number: 20-00459

vs.

Respondent

UBS Financial Services Inc.

Hearing Site: Boca Raton, Florida

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 Claimants Joel D. Zychick, Trustee of the GST Trust U/W Irving Siegel (“Claimant GST”) and Joel D. Zychick, Trustee of the QTIP Trust U/W Irving Siegel (“Claimant QTIP”): Jeffrey B. Kaplan, Esq., Dimond Kaplan & Rothstein P.A., Miami, Florida.

For Respondent UBS Financial Services Inc.: Patrick M. Smith, Esq. and Timothy White, Esq., Katten Muchin Rosenman LLP, Los Angeles, California.

CASE INFORMATION

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

Joel D. Zychick, Trustee of the GST Trust U/W Irving Siegel signed the Submission Agreement: February 7, 2020.

Joel D. Zychick, Trustee of the QTIP Trust U/W Irving Siegel signed the Submission Agreement: February 7, 2020.

Statement of Answer filed by Respondent on or about: May 18, 2020.

UBS Financial Services Inc. signed the Submission Agreement: February 13, 2020.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: fraud, misrepresentation, unsuitability, unsuitable product, breach of fiduciary duty, negligence and breach of contract, under the federal securities laws, FINRA regulations, Florida securities statutes and applicable common law, respondeat superior, control person liability, and failure to supervise. The causes of action relate to Claimants' investment in the Yield Enhancement Strategy ("YES") offering with Respondent.

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: equitable relief of rescission of all trading losses, mandates and disgorgement of all margin interest and fees received by Respondent; total compensatory damages of approximately \$2,200,000.00 (\$1,500,000.00 for Claimant QTIP and \$700,000.00 for Claimant GST), distributed to the accounts in such respective amounts as appropriate, including recovery of all trading losses, margin interest and fees received by Respondent; recovery of pre- and post-award interest, costs, expenses, attorneys' fees, expert fees, and forum fees of this arbitration; and 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 dismissal of the Statement of Claim in its entirety with prejudice; expungement of this matter from the Central Registration Depository ("CRD") records of Unnamed Parties Monty Cerf ("Cerf") and Matthew Buchsbaum ("Buchsbaum"); and such other and further relief deemed just and proper 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 November 22, 2021, the parties filed an Agreed Withdrawal of Claims Filed Under Florida's Securities Statute, with each party to bear their own attorneys' fees and costs.

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 Claimant GST the sum of \$517,020.80 in compensatory damages.

2. Respondent is liable for and shall pay to Claimant GST pre-judgment interest on the above-stated sum in the amount of \$49,118.52. Post judgment interest shall accrue pursuant to the Code of Arbitration Procedure (“Code”).
3. Respondent is liable for and shall pay to Claimant QTIP the sum of \$1,171,124.80 in compensatory damages.
4. Respondent is liable for and shall pay to Claimant QTIP pre-judgment interest on the above-stated sum in the amount of \$111,260.36. Post judgment interest shall accrue pursuant to the Code.
5. Claimants’ request for punitive damages is denied.
6. Respondent is liable for and shall pay to Claimants the sum of \$600.00, representing reimbursement of the non-refundable claim filing fee previously paid by Claimants to FINRA Dispute Resolution Services.
7. Respondent is liable for and shall pay to Claimants the sum of \$26,512.50 representing reimbursement of expert witness fees.
8. Respondent’s request for expungement of this matter on behalf of Unnamed Parties Monty Cerf (CRD Number 2269462) (Occurrence Number 2065855) and Matthew Buchsbaum (CRD Number 2220565) (Occurrence Number 2065245) are denied.
9. Any and all claims for relief not specifically addressed herein, including any requests for attorneys’ fees, are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

| | |
|--------------------------|--------------|
| Initial Claim Filing Fee | =\$ 2,000.00 |
|--------------------------|--------------|

**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 | =\$ 3,025.00 |
| Member Process Fee | =\$ 6,175.00 |

Postponement Fees

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

January 10, 2021, postponement requested by parties

WAIVED

The Panel has waived the postponement fee.

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 @ \$1,400.00/session | = \$ | 1,400.00 |
| Pre-Hearing Conference: June 9, 2020 | 1 session | |
| Ten (10) hearing sessions @ \$1,400.00/session | = \$ | 14,000.00 |
| Hearings: | | |
| January 11, 2022 | 2 sessions | |
| January 12, 2022 | 2 sessions | |
| January 13, 2022 | 2 sessions | |
| January 14, 2022 | 2 sessions | |
| January 19, 2022 | 2 sessions | |

Total Hearing Session Fees = \$ 15,400.00

The Panel has assessed \$7,700.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$7,700.00 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

| | | |
|----------------------|---|--|
| Robert Steven Haught | - | Public Arbitrator, Presiding Chairperson |
| Marsha Matson | - | Public Arbitrator |
| Randy Atlas | - | 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.

Dissenting Arbitrator's Signature

Robert Steven Haught

Robert Steven Haught
Public Arbitrator, Presiding Chairperson

02/02/2022

Signature Date

Concurring Arbitrators' Signatures

Marsha Matson

Marsha Matson
Public Arbitrator

02/02/2022

Signature Date

Randy Atlas

Randy Atlas
Public Arbitrator

02/01/2022

Signature Date

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February 03, 2022

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