

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

UBS Financial Services Inc.

Case Number: 17-02495

vs.

Respondent

Michael Anthony Margiotta

Hearing Site: Los Angeles, California

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: Member vs. Associated Person

This case was decided by a majority-public panel.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant UBS Financial Services Inc.: Elizabeth H. Lindh, Esq., Keesal, Young & Logan, Long Beach, California.

For Respondent Michael Anthony Margiotta: Steve Alan Buchwalter, Esq., Law Offices of Steve A. Buchwalter, P.C., Encino, California.

CASE INFORMATION

Statement of Claim filed on or about: September 18, 2017.

Answer to the Counterclaim filed on or about: March 13, 2018.

Claimant signed the Submission Agreement: September 18, 2017.

Statement of Answer and Counterclaim filed by Respondent on or about: December 28, 2017.

Respondent signed the Submission Agreement: January 8, 2018.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: breach of contract; common count for money lent; common count for account stated; and unjust enrichment. The causes of action relate to breach of four promissory notes dated November 3, 2008, November 5, 2010, April 25, 2014, and February 20, 2015 (“Notes”). Claimant alleged that Respondent

failed to repay the balances of the Notes upon the conclusion of Respondent's employment with Claimant.

In the Statement of Answer and Counterclaim, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses. Further, Respondent asserted the following causes of action: violation of the Exchange Act § 10(b), 15 U.S.C. § 78j et seq., and Rule 10b-5, 17 C.F.R. § 240.10b-5 ("Count One"); common law fraud ("Count Two"); and fraudulent inducement ("Count Three").

In the Answer to the Counterclaim, Claimant denied the allegations made in the Counterclaim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Repayment of the principal amount of the loans in the amount of \$648,137.48;
2. Interest pursuant to the terms and conditions agreed to in writing by the parties;
3. Costs of collection, including all expenses, disbursements, forum fees and attorneys' fees incurred in connection with this arbitration proceeding, pursuant to the terms and conditions agreed to in writing by the parties; and
4. Such other and further relief as the Panel deems just and equitable.

In the Statement of Answer and Counterclaim, Respondent requested:

1. On Count One, an amount to be determined at the hearing, but not less than \$201,697.00;
2. On Count Two, an amount to be determined at the hearing, but not less than \$375,000.00;
3. On Count Three, an amount to be determined at the hearing, but not less than \$375,000.00;
4. Punitive damages, prejudgment interest, costs, and attorneys' fees; and
5. Such other and further relief that the Panel may deem just and proper.

In the Answer to the Counterclaim, Claimant requested:

1. Respondent's Counterclaim be dismissed in its entirety;
2. Costs and attorneys' fees incurred in defending the Counterclaim per the contracts executed by Respondent; and
3. Any and all other appropriate relief.

OTHER ISSUES CONSIDERED AND DECIDED

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

During the prehearing conference on March 9, 2021, Claimant moved for the evidentiary hearing to be held remotely. On March 23, 2021, Respondent filed its opposition. By Order dated April 26, 2021, the Panel denied Claimant's request for the evidentiary hearing to be held remotely.

On December 27, 2021, Respondent submitted a motion to allow witnesses to appear remotely at the evidentiary hearing. On December 29, 2021, Claimant replied in support of the motion,

and further moved for the evidentiary hearing to be completely remote. That same day, Respondent agreed, and the Panel granted the motion for the evidentiary hearing to be held remotely.

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 the sum of \$763,609.03 in principal and interest on all 4 promissory notes.
2. Respondent is liable for and shall pay to Claimant the sum of \$182,355.75 in attorneys' fees and costs pursuant to the parties' agreement in each promissory note.
3. Respondent's counterclaim is denied.
4. 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	= \$	2,550.00
Counterclaim 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 that employed the associated person at the time of the event giving rise to the dispute. Accordingly, as a party, Claimant is assessed the following:

Member Surcharge	= \$	2,475.00
Member Process Fee	= \$	5,075.00

Postponement Fees

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

February 25-28, 2020, postponement requested by Respondent	= \$	1,300.00
<hr/>		
Total Postponement Fees	= \$	1,300.00

The Panel has assessed the total postponement fees to Respondent.

Last-Minute Cancellation Fees

Fees apply when a hearing on the merits is cancelled within ten calendar days before the start of a scheduled hearing session:

February 25-28, 2020, cancellation requested by Respondent	= \$	1,800.00
<hr/>		
Total Last-Minute Cancellation Fees	= \$	1,800.00

The Panel has assessed the total last-minute cancellation fees to Respondent.

Discovery-Related Motion Fees

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

Two (2) decisions on discovery-related motions on the papers with one (1) Arbitrator @ \$200.00/decision	= \$	400.00
--	------	--------

One (1) decision on discovery-related motions on the papers with three (3) Arbitrators @ \$600.00/decision	= \$	600.00
--	------	--------

Claimant submitted One (1) discovery-related motion
Respondent submitted Two (2) discovery-related motions

Total Discovery-Related Motion Fees	= \$	1,000.00
-------------------------------------	------	----------

The Panel has assessed \$800.00 of the discovery-related motion fees to Claimant.

The Panel has assessed \$200.00 of the discovery-related motion 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 Arbitrators, including a pre-hearing conference with the Arbitrators, which lasts four (4) hours or less. Fees associated with these proceedings are:

Five (5) pre-hearing sessions with the Panel @ \$1,300.00/session	= \$	6,500.00
Pre-Hearing Conferences:		
May 25, 2018	1 session	
May 24, 2019	1 session	
February 25, 2020	1 session	
April 15, 2020	1 session	
March 9, 2021	1 session	
Seven (7) hearing sessions @ \$1,300.00/session	= \$	9,100.00
Hearings:		
January 10, 2022	2 sessions	
January 11, 2022	2 sessions	
January 12, 2022	2 sessions	
January 13, 2022	1 session	

Total Hearing Session Fees = \$ 15,600.00

The Panel waived \$2,600.00 of the hearing session fees.

The Panel has assessed \$6,500.00 of the hearing session fees to Claimant.

The Panel has assessed \$6,500.00 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

George Herman Frisch	-	Public Arbitrator, Presiding Chairperson
Paula K. Konikoff	-	Public Arbitrator
Jonathan Gartner	-	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

George Herman Frisch

George Herman Frisch
Public Arbitrator, Presiding Chairperson

01/27/2022

Signature Date

Paula K. Konikoff

Paula K. Konikoff
Public Arbitrator

01/27/2022

Signature Date

Jonathan Gartner

Jonathan Gartner
Non-Public Arbitrator

01/28/2022

Signature Date

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.

January 31, 2022

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