

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

UBS Financial Services Inc.
UBS Credit Corp.

Case Number: 17-02850

vs.

Respondent

William John Paynter

Hearing Site: Phoenix, Arizona

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 and Non-Member vs. Associated Person

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimants UBS Financial Services Inc. and UBS Credit Corp. (collectively “Claimants”): Michael F. Braun, Esq., Howard & Howard Attorneys PLLC, Chicago, Illinois.

For Respondent William John Paynter (“Respondent”): Laurence M. Landsman, Esq., Latimer LeVay Fyock, LLC, Chicago, Illinois.

CASE INFORMATION

Statement of Claim filed on or about: October 24, 2017.

Amended Statement of Claim filed on or about: October 25, 2018.

Answer to Counterclaim filed on or about: February 12, 2018.

Answer to Amended Counterclaim filed on or about: February 25, 2019

UBS Financial Services Inc. signed the Submission Agreement: October 24, 2017.

UBS Credit Corp. signed the Submission Agreement: October 24, 2017.

Statement of Answer and Counterclaim filed by Respondent on or about: January 16, 2018.

Answer to Amended Statement of Claim and Amended Counterclaim filed by Respondent on or about: December 11, 2018.

Respondent signed the Submission Agreement: December 28, 2017.

CASE SUMMARY

In the Statement of Claim, Claimants asserted causes of action for breach of contract of four promissory notes executed by Respondent dated November 4, 2014 (“Note #7313N”), November 4, 2014 (“Note #7314N”), February 5, 2015 (“Note #13471N”), and May 22, 2015 (“Note #13914N”), hereinafter collectively referred to as the (“Notes”), and unjust enrichment. Claimants asserted that the remaining balance of the Notes became due upon the termination of Respondent’s employment with Claimants.

In the Amended Statement of Claim, Claimants asserted an additional cause of action of breach of contract related to Respondent’s alleged misappropriation of confidential and proprietary customer information.

In the Statement of Answer and the Answer to Amended Statement of Claim, Respondent denied the allegations made in the Statements of Claim and asserted various affirmative defenses.

In the Counterclaim, Respondent asserted the following causes of action: breach of contract; fraud; breach of the implied covenant of good faith and fair dealing; negligent misrepresentation; tortious interference; constructive discharge; defamation per se; and intentional infliction of emotional distress.

In the Amended Counterclaim, Respondent asserted the following additional causes of action: promissory estoppel; false light invasion of privacy; and violation of the Fair Labor Standards Act. The causes of action relate to Respondent’s employment with Claimants.

In the Answers to the Counterclaim and the Amended Counterclaim, Claimants denied the allegations made in the Counterclaims and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested:

1. Damages in the amount of \$429,595.44, plus accrued interest as provided in Note #7313N;
2. Damages in the amount of \$974,019.28, plus accrued interest as provided in Note #7314N;
3. Damages in the amount of \$464,520.04, plus accrued interest as provided in Note #13471N;
4. Damages in the amount of \$9,527.58, plus accrued interest as provided in Note #13914N;
5. Costs of the arbitration, including filing fees, forum fees, attorneys’ fees, and interest; and
6. Such other relief as may be just and proper.

In the Amended Statement of Claim, Claimants requested:

1. Damages in the amount of \$429,595.44, plus accrued interest as provided in Note #7313N;
2. Damages in the amount of \$974,019.28, plus accrued interest as provided in Note #7314N;
3. Damages in the amount of \$464,520.04, plus accrued interest as provided in Note #13471N;
4. Damages in the amount of \$9,527.58, plus accrued interest as provided in Note #13914N;

5. Damages for the breach of the provisions in the Transition Agreements regarding “Confidentiality of Client Information” in an amount to be proved at the arbitration hearing;
6. The Panel enter an Order that Respondent return to Claimants any and all copies of client information in his possession, control or custody and that he certify that any such client information retained electronically has been permanently and completely deleted;
7. Costs of the arbitration, including filing fees, forum fees, attorneys’ fees, and interest; and
8. Such other relief as may be just and proper.

In the Statement of Answer and the Answer to the Amended Statement of Claim, Respondent requested:

1. Claimants take nothing by their Statement of Claim;
2. Costs; and
3. Reasonable attorneys’ fees.

In the Counterclaim and the Amended Counterclaim, Respondent requested:

1. Damages in an amount to be proved at hearing, well in excess of \$1 million;
2. Punitive damages;
3. Interest;
4. Attorneys’ fees and costs; and
5. Such other relief as the Panel may deem just and proper.

In Claimants’ Answer to the Counterclaim, Claimants requested:

1. Respondent’s Counterclaim be denied and an award be entered in favor of Claimants;
2. Claimants be granted the damages sought in the Statement of Claim, including compensatory damages, interest, attorneys’ fees and costs; and
3. Such other and further relief as the Panel deems just and equitable.

In Claimants’ Answer to the Amended Counterclaim, Claimants requested:

1. Respondent’s Amended Counterclaim be dismissed with prejudice;
2. Attorneys’ fees and costs in defending the Amended Counterclaim;
3. The damages sought in the Amended Statement of Claim; and
4. Such other and further relief as the Panel deems just and equitable.

OTHER ISSUES CONSIDERED AND DECIDED

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

On October 25, 2018, Claimants filed a Motion to Amend the Statement of Claim. On November 5, 2018, Respondent filed a notice of non-opposition to Claimants’ motion to amend. On November 21, 2018, the Panel granted Claimants’ motion.

On April 14, 2021, the parties filed a stipulation regarding the loan balances of the Notes with respect to the loans received by Respondent from Claimants, the payments made by Respondent on those loans and the remaining balances on those loans at the time Respondent resigned from UBS Financial Services, Inc.

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

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, 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 \$1,897,662.34 in damages for the repayment of the Notes.
2. Respondent is liable for and shall pay to Claimants 75% of the accrued interest on the Notes as set forth in the stipulation submitted on April 14, 2021, starting from the date of Respondent's resignation from UBS Financial Services, Inc. on April 27, 2017, through and including the date this award is paid in full.
3. Respondent shall return to Claimants the client information as specified in the Transition Agreement and the Protocol for Broker Recruiting.
4. Claimants are jointly and severally liable for and shall pay to Respondent the sum of \$200,000.00 in damages resulting from constructive discharge. This award shall not be an offset.
5. Claimants are jointly and severally liable for and shall pay to Respondent the sum of \$100,000.00 in damages arising from negligent misrepresentation of the loan program. This award shall not be an offset.
6. All other counterclaims are denied.
7. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages and attorneys' fees, 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	=\$ 3,400.00
Counterclaim 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 party, UBS Financial Services, Inc. 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:

February 19-22, 2019, postponement requested by parties	= \$	1,400.00
February 4-7 & 10-12, 2020, postponement requested by Parties	= \$	1,400.00
<hr/>		
Total Postponement Fees	= \$	2,800.00

The Panel has assessed \$700.00 of the postponement fees jointly and severally to Claimants.

The Panel has assessed \$2,100.00 of the postponement fees to Respondent.

Discovery-Related Motion Fees

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

Five (5) decisions on discovery-related motions on the papers with one (1) Arbitrator @ \$200.00/decision	= \$	1,000.00
---	------	----------

Claimants submitted one (1) discovery-related motion
Respondent submitted four (4) discovery-related motions

<hr/>		
Total Discovery-Related Motion Fees	= \$	1,000.00

The Panel has assessed \$500.00 of the discovery-related motion fees jointly and severally to Claimants.

The Panel has assessed \$500.00 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 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 a single Arbitrator @ \$450.00/session	= \$	450.00
Pre-Hearing Conference: November 1, 2019	1 session	

Seven (7) pre-hearing sessions with the Panel @ \$1,400.00/session	= \$	9,800.00
Pre-Hearing Conferences: April 17, 2018	1 session	
February 5, 2019	1 session	
December 23, 2019	1 session	
July 8, 2020	1 session	
February 1, 2021	1 session	
February 11, 2021	1 session	
March 12, 2021	1 session	

Thirteen (13) hearing sessions @ \$1,400.00/session	= \$	18,200.00
Hearings: April 19, 2021	1 session	
August 10, 2021	2 sessions	
August 11, 2021	2 sessions	

August 12, 2021	2 sessions
August 13, 2021	2 sessions
August 20, 2021	2 sessions
August 25, 2021	2 sessions

Total Hearing Session Fees	= \$ 28,450.00
----------------------------	----------------

The Panel waived \$450.00 of the hearing session fees.

The Panel has assessed \$14,000.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$14,000.00 of the hearing session fees to Respondent.

ARBITRATION PANEL

Richard D. Fincher	-	Public Arbitrator, Presiding Chairperson
Floyd Gerry Hoffman	-	Public Arbitrator
Dean Jackson Call	-	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

Richard D. Fincher

Richard D. Fincher
Public Arbitrator, Presiding Chairperson

09/26/2021

Signature Date

Floyd Gerry Hoffman

Floyd Gerry Hoffman
Public Arbitrator

09/27/2021

Signature Date

Dean Jackson Call

Dean Jackson Call
Non-Public Arbitrator

09/27/2021

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.

September 27, 2021

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