

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
UBS Financial Services Inc.

Case Number: 17-03115

vs.

Respondent
Joseph Walter Modero

Hearing Site: Jersey City, New Jersey

vs.

Third Party Respondent
Todd Michael Ellentuck

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 vs. Associated Person

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant UBS Financial Services Inc.: Anthony J. Borrelli, Esq. and Hunt Ricker, Esq., Riker, Danzig, Scherer, Hyland & Perretti LLP, Morristown, New Jersey.

For Respondent Joseph Walter Modero: Jenice L. Malecki, Esq., Malecki Law, New York, New York.

Third Party Respondent Todd Michael Ellentuck: Previously represented by George F. Meierhofer, Esq., Kaufman Dolowich & Voluck, LLP, New York, New York until on or about December 1, 2018.

CASE INFORMATION

Statement of Claim filed on or about: November 20, 2017.

Answer to Counterclaim filed on or about: June 29, 2018.

UBS Financial Services Inc. signed the Submission Agreement: November 16, 2017.

Statement of Answer and Counterclaim filed by Respondent on or about: May 21, 2018.

Amended Statement of Answer, Counterclaim and Third-Party Claim filed on or about:

May 29, 2018

Joseph Walter Modero signed the Submission Agreement: May 25, 2018.

Statement of Answer to the Third-Party Claim filed by Third-Party Respondent Todd Michael Ellentuck on or about: August 20, 2018.

Todd Michael Ellentuck signed the Submission Agreement: August 16, 2018.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following cause of action: breach of promissory notes.

Unless specifically admitted in the Amended Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

In the Counterclaim and Third Party Claim, Respondent Joseph Walter Modero asserted the following causes of action: violation of the New Jersey Law Against Discrimination; violation of the New Jersey Conscientious Employee Protection Act; breach of contract; breach of the implied covenant of good faith and fair dealing; wrongful termination, interference with economic relations; conversion; and quantum meruit.

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

Unless specifically admitted in the Answer to the Third-Party Claim, Third Party Respondent Todd Michael Ellentuck denied the allegations made in the Third-Party Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested compensatory damages, in the principal amount of \$262,857.15; interest and late fees on the principal amount due and owing; attorneys' fees; costs, expenses and fees incurred by Claimant including, but not limited to, FINRA filing fees in the amount of \$4,025.00; and such other and further relief as deemed just and equitable.

In the Amended Statement of Answer, Counterclaim and Third Party Claim, Respondent Joseph Walter Modero requested an Order to expunge his Form U5 Central Registration Depository Disclosure Reporting Pages to Reflect "Voluntary"; compensatory damages of \$1,000,000.00; punitive damages; interest; attorneys' fees; arbitration fees; costs and expenses; and such other and further relief as seems just and proper.

In the Answer to the Counterclaim, Claimant requested that the Counterclaim be dismissed in its entirety and with prejudice, and for such other and further relief as the Arbitrators deem just and equitable.

In the Answer to the Third Party Claim, Third Party Respondent Todd Michael Ellentuck requested an award denying all claims asserted by Respondent Joseph Walter Modero, in their entirety and with prejudice; together with all other costs and expenses incurred by Third Party Respondent Todd Michael Ellentuck (including attorneys' fees, costs, expenses and FINRA

filing fees); and all other relief deemed appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

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

On December 1, 2018, Notice of Death of Third-Party Respondent Todd Michael Ellentuck and Withdrawal of Counsel was filed. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Third-Party Claim.

At the hearing, Respondent Joseph Walter Modero withdrew his request for expungement.

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 Joseph Walter Modero is liable for and shall pay to Claimant the sum of \$262,857.15 in compensatory damages.
2. Respondent Joseph Walter Modero is liable for and shall pay to Claimant interest in the sum of \$12,618.00.
3. Respondent Joseph Walter Modero is liable for and shall pay to Claimant interest at the rate of \$9.00 per day from March 12, 2021 until date of full payment.
4. Respondent Joseph Walter Modero is liable for and shall pay to Claimant the sum of \$145,644.30 in attorneys' fees pursuant to the terms of the promissory notes.
5. Respondent Joseph Walter Modero's Counterclaim is denied in its entirety.
6. Respondent Joseph Walter Modero is liable for and shall pay to Claimant \$1,000.00 to reimburse Claimant for the non-refundable portion of the filing fee previously paid to FINRA Dispute Resolution Services.
7. 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 = \$ 2,125.00
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 events giving rise to the dispute. Accordingly, as a party, Claimant UBS Financial Services Inc. is assessed the following:

Member Surcharge = \$ 1,900.00
Member Process Fee = \$ 5,075.00

Postponement Fees

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

April 9-12, 2019, postponement requested by the parties. WAIVED
December 17-19, 2019, postponement requested by the Respondent. = \$ 1,300.00

Total Postponement Fees = \$ 1,300.00

The Panel has assessed the total postponement fees to Respondent Joseph Walter Modero.

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:

December 17-19, 2019, cancellation requested by the parties. = \$ 1,800.00

Total Last-Minute Cancellation Fees = \$ 1,800.00

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

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:

Three (3) pre-hearing sessions with the Panel @ \$1,300.00/session = \$ 3,900.00
Pre-Hearing Conferences: July 30, 2018 1 session
June 3, 2019 1 session
June 25, 2020 1 session

Six (6) hearing sessions @ \$1,300.00/session = \$ 7,800.00
Hearings: March 9, 2021 2 sessions
March 10, 2021 2 sessions
March 11, 2021 2 sessions

Total Hearing Session Fees =\$ 11,700.00

The Panel has assessed \$1,950.00 of the hearing session fees to Claimant.
The Panel has assessed \$9,750.00 of the hearing session fees to Respondent Joseph Walter Modero.

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

ARBITRATION PANEL

Michael H DuBoff	-	Public Arbitrator, Presiding Chairperson
Judith B Weinstock	-	Public Arbitrator
Eric Moss Stein	-	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

Michael H DuBoff

Michael H DuBoff
Public Arbitrator, Presiding Chairperson

03/18/2021

Signature Date

Judith B Weinstock

Judith B Weinstock
Public Arbitrator

03/22/2021

Signature Date

Eric Moss Stein

Eric Moss Stein
Non-Public Arbitrator

03/20/2021

Signature Date

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March 22, 2021

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