

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Aron Tessler
Naomi Tessler
Tessler Associates LLC
Aron & Ritchel Zichron Kdoshim Loan Fund

Case Number: 18-04033

vs.

Respondents

UBS Financial Services Inc.
Wells Fargo Clearing Services, LLC

Hearing Site: New York, New York

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. Members

This case was decided by an all-public panel.

The evidentiary hearing was conducted partially by videoconference.

REPRESENTATION OF PARTIES

For Claimants Aron Tessler, Naomi Tessler, Tessler Associates LLC, and Aron & Ritchel Zichron Kdoshim Loan Fund: Seth Lipner, Esq., Deutsch & Lipner, Garden City, New York.

For Respondent UBS Financial Services Inc. (“UBS”): Richard J.L. Lomuscio, Esq., Riker Danzig Scherer Hyland Perretti LLP, New York, New York.

For Respondent Wells Fargo Clearing Services, LLC (“Wells Fargo”): Jeffery D. Rodgers, Jr., Esq., Wells Fargo Legal Department, St. Louis, Missouri and Sandra Grannum, Esq., Faegre Drinker Biddle & Reath LLP, Florham Park, New Jersey.

CASE INFORMATION

Statement of Claim filed on or about: November 27, 2018.

Aron Tessler signed the Submission Agreement: March 5, 2020.

Naomi Tessler signed the Submission Agreement: March 5, 2020.

Tessler Associates LLC signed the Submission Agreement: March 5, 2020.

Aron & Ritchel Zichron Kdoshim Loan Fund signed the Submission Agreement: March 5, 2020.

Statement of Answer filed by Respondent UBS on or about: February 21, 2019.
UBS signed the Submission Agreement: December 6, 2018.

Statement of Answer filed by Respondent Wells Fargo on or about: March 9, 2020.
Wells Fargo signed the Submission Agreement: March 9, 2020.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: breach of fiduciary duty, failure to supervise, violation of Industry Rules, unsuitability. The causes of action relate to trading in bonds and other unspecified securities.

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

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

RELIEF REQUESTED

In the Statement of Claim, Claimants requested compensatory damages in an amount not to exceed \$1,000,000.00; punitive damages; costs; and such other relief as the Arbitrators deem justified.

In the Statement of Answer, Respondent UBS requested an award dismissing the Statement of Claim in its entirety and with prejudice; expungement of this matter from Unnamed Party Leonard Boccia's CRD; and such other and further relief as the Arbitrators deem just and proper.

In the Statement of Answer, Respondent Wells Fargo requested that the Panel dismiss the Statement of Claim in its entirety and with prejudice; award costs and expenses; and such other and further relief as is just and proper.

At the conclusion of the hearing, Claimant requested disgorged fees in the amount of \$600,287.00; statutory interest in the amount of \$378,181.00; and punitive damages in the amount of \$2,935,404.00.

OTHER ISSUES CONSIDERED AND DECIDED

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

On February 24, 2020, Claimant filed a notice of settlement of claims against Respondent UBS Financial Services Inc.

The hearings in this arbitration were held in-person on October 18-22, 2021. Pursuant to an agreement between the parties and the Panel, the hearing on November 1, 2021 was held virtually via Zoom.

The Panel reviewed Unnamed Party Leonard Anthony Boccia's BrokerCheck® Report. The Panel noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrence in the CRD.

In recommending expungement, the Panel relied upon the following documentary or other evidence: the exhibits, including but not limited to emails, monthly account statements, trading confirmations and Aron Tessler's testimony.

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. Claimants' claims are denied in their entirety.
2. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2009781) from registration records maintained by the CRD for Unnamed Party Leonard Anthony Boccia (CRD Number 2008940) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Leonard Anthony Boccia must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 12805 of the Code of Arbitration Procedure ("Code"), the Panel has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is false.

The Arbitrator has made the above Rule 2080 finding based on the following reasons:

Aron Tessler was driving the trades in the accounts as evidenced by the emails and testimony adduced at the hearing. Multiple emails evidence that Aron Tessler was consistently asking for higher yields and more returns thereby causing turnover of investments as well as treating his investment accounts as checking accounts by depositing and withdrawing large sums from the account at various times resulting in purchases of investments upon deposit of funds and sales of investments when withdrawing funds. One email stated: "see if there are better offers now then [sic] before if yes please sell those and buy". Additionally, Aron Tessler received and read monthly statements of the sales and purchases and testified that he compared them with the trading confirmations. Additionally, detailed trading confirmations were provided to Aron. There was no evidence introduced at the hearing that Aron Tessler ever complained about an unsuitable volume of trading between 2012 and 2016.

3. 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 ("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

**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 firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as parties, Respondents UBS Financial Services Inc. and Wells Fargo Securities, LLC are each 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:

November 13, 2019, cancellation requested by the parties = \$ 100.00

Total Late Pre-Hearing Cancellation Fees = \$ 100.00

The Panel has assessed \$33.33 of the late pre-hearing cancellation fees jointly and severally to Claimants.

The Panel has assessed \$33.33 of the late pre-hearing cancellation fees to Respondent UBS.

The Panel has assessed \$33.33 of the late pre-hearing cancellation fees to Respondent Wells Fargo.

Postponement Fees

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

February 19-21, 24, 2020, postponement requested by the parties = \$ 1,300.00

March 15-18, 2021, postponement requested by Claimants = \$ 1,300.00

Total Postponement Fees = \$ 2,600.00

The Panel has assessed \$1,300.00 of the postponement fees jointly and severally to Claimants.

The Panel has assessed \$1,300.00 of the postponement fees to Respondent Wells Fargo Securities, LLC.

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 19-21 and 24, 2020, 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 Wells Fargo Securities, LLC.

Discovery-Related Motion Fees

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

Three (3) decisions on discovery-related motions on the papers = \$ 600.00
with one (1) Arbitrator @ \$200.00/decision

Respondent Wells Fargo submitted three (3) discovery-related motions

Total Discovery-Related Motion Fees = \$ 600.00

The Panel has assessed \$200.00 of the discovery-related motion fees jointly and severally to Claimants.

The Panel has assessed \$400.00 of the discovery-related motion fees to Respondent Wells Fargo.

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: March 22, 2019 1 session
March 4, 2020 1 session
November 9, 2020 1 session

Eleven (11) hearing sessions @ \$1,300.00/session = \$ 14,300.00
Hearings: October 18, 2021 2 sessions
October 19, 2021 2 sessions
October 20, 2021 2 sessions
October 21, 2021 2 sessions
October 22, 2021 2 sessions
November 1, 2021 1 session

Total Hearing Session Fees = \$ 18,200.00

The Panel has assessed \$1,950.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$10,725.00 of the hearing session fees jointly and severally to Claimants Aron Tessler and Tessler Associates LLC.

The Panel has assessed \$650.00 of the hearing session fees jointly and severally to Respondents UBS and Wells Fargo.

The Panel has assessed \$4,875.00 hearing session fees to Respondent Wells Fargo.

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

ARBITRATION PANEL

Keely D. Parr	-	Public Arbitrator, Presiding Chairperson
Paul C. Tang	-	Public Arbitrator
Gerald M. Levine	-	Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

Concurring Arbitrators' Signatures

Keely D. Parr

Keely D. Parr
Public Arbitrator, Presiding Chairperson

11/16/2021

Signature Date

Paul C. Tang

Paul C. Tang
Public Arbitrator

11/15/2021

Signature Date

Gerald M. Levine

Gerald M. Levine
Public Arbitrator

11/15/2021

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.

November 17, 2021

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