

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Linda Falk, as Trustee of the Child's Trust for the benefit of Mariel Falk created under Article Fourth of the Spencer Falk Grantor Retained Annuity Trust dated March 5, 1999 and as Trustee of the Child's Trust for the benefit of Aliya Falk created under Article Fourth of the Spencer Falk Grantor Retained Annuity Trust dated March 5, 1999; Mariel Falk; and Aliya Falk

Case Number: 18-04247

vs.

Respondents

UBS Financial Services Inc.
Gary L. Zahakos

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. Member and Associated Person

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimants Linda Falk, as Trustee of the Child's Trust for the benefit of Mariel Falk created under Article Fourth of the Spencer Falk Grantor Retained Annuity Trust dated March 5, 1999 and as Trustee of the Child's Trust for the benefit of Aliya Falk created under Article Fourth of the Spencer Falk Grantor Retained Annuity Trust dated March 5, 1999 ("Linda Falk"); Mariel Falk; and Aliya Falk: John C. Re, Esq., Kurzman Eisenberg Corbin & Lever, LLP, White Plains, New York.

For Respondents UBS Financial Services Inc. and Gary L. Zahakos: Joshua S. Bratspies, Esq., Sherman Atlas Sylvester & Stamelman LLP, Florham Park, New Jersey.

CASE INFORMATION

Statement of Claim filed on or about: December 14, 2018.

Linda Falk signed the Submission Agreement: December 21, 2018.
Mariel Falk signed the Submission Agreement: December 21, 2018.
Aliya Falk signed the Submission Agreement: December 21, 2018.

Joint Statement of Answer filed by Respondents on or about: February 11, 2019.
UBS Financial Services Inc. signed the Submission Agreement: February 11, 2019.
Gary L. Zahakos signed the Submission Agreement: February 8, 2019.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: breach of fiduciary duty; negligence; misappropriation of funds; conversion; and unjust enrichment. The causes of action relate to unspecified securities.

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

RELIEF REQUESTED

In the Statement of Claim, Claimants requested: damages in an amount to be determined; costs and disbursements; and such other and further relief that the Panel deems just, proper and equitable.

In the Joint Statement of Answer, Respondents requested: dismissal of the Statement of Claim with prejudice; litigation costs; attorneys' fees; expungement of this matter from registration records maintained by the Central Registration Depository ("CRD") for Gary L. Zahakos; and for such other and further relief that 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.

At the conclusion of Claimants' case-in-chief, Respondents made a Motion to Dismiss and Claimants opposed the motion. After due deliberation, the Panel deferred a decision on Respondents' Motion to Dismiss.

The Panel also conducted a recorded hearing by videoconference on July 28, 2021, so the parties could present oral argument and evidence on Gary L. Zahakos' request for expungement.

The Panel reviewed Gary L. Zahakos' 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: Claimant Linda Falk's testimony; Respondent Gary L. Zahakos' testimony; the testimonies of other witnesses; and the exhibits.

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 2014511) from registration records maintained by the CRD for Respondent Gary L. Zahakos (CRD Number 1321057) with the understanding that, pursuant to Notice to Members 04-16, Respondent Gary L. Zahakos 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 factually impossible or clearly erroneous

The Panel has made the above Rule 2080 findings based on the following reasons:

Claimants' alleged that their financial advisor, Gary L. Zahakos, misused trust funds as collateral for a loan and also alleged misappropriation and negligence. The Panel finds that there was no credible documentary or testimonial evidence adduced to support any wrongdoing by Gary L. Zahakos.

3. Any and all claims for relief not specifically addressed herein, including any requests for 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	=\$ 1,575.00
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**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 persons at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent UBS Financial Services Inc. is assessed the following:

Member Surcharge	= \$	1,900.00
Member Process Fee	= \$	3,750.00

Postponement Fees

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

March 31- April 2, 2020 postponement requested by the parties	Waived
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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:

Four (4) pre-hearing sessions with the Panel @ \$1,125.00/session	= \$	4,500.00
Pre-Hearing Conferences:		
April 23, 2019	1 session	
January 5, 2021	1 session	
January 12, 2021	1 session	
May 26, 2021	1 session	

Six (6) hearing sessions with the Panel @ \$1,125.00/session	= \$	6,750.00
Hearings:		
June 1, 2021	2 sessions	
June 2, 2021	2 sessions	
June 3, 2021	2 sessions	

One (1) hearing session on expungement request @ \$1,125.00/session	= \$	1,125.00
Hearing:		
July 28, 2021	1 session	

Total Hearing Session Fees	= \$	12,375.00
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The Panel has assessed \$5,625.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$5,625.00 of the hearing session fees to Respondent UBS Financial Services Inc.

The Panel has assessed \$1,125.00 of the hearing session fees to Respondent Gary L. Zahakos for the July 28, 2021 expungement hearing.

ARBITRATION PANEL

Jay Alan Kranis	-	Public Arbitrator, Presiding Chairperson
David John Reilly	-	Public Arbitrator
Albert Rizzo	-	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

Jay Alan Kranis

Jay Alan Kranis
Public Arbitrator, Presiding Chairperson

08/03/2021

Signature Date

David John Reilly

David John Reilly
Public Arbitrator

08/03/2021

Signature Date

Albert Rizzo

Albert Rizzo
Public Arbitrator

08/03/2021

Signature Date

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August 04, 2021

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