

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

James M. LeFebvre, Trustee

Case Number: 19-00509

vs.

Respondents

UBS Financial Services Inc.,
Michael Martin, and
Patrick Donnelly

Hearing Site: Tampa, Florida

vs.

Third-Party Respondent

Dennis L. LeFebvre

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: Customer vs. Member and Associated Persons v. Customer

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimant James M. LeFebvre, Trustee (“Claimant”): Bart Heemskerk, Esq., Springfield, Massachusetts.

For Respondent UBS Financial Services Inc. (“UBS”): Edwin Zipfs, Esq. Bressler, Amery & Ross, P.C., Florham Park, New Jersey and Gregory S. Sparer, Esq., Bressler, Amery & Ross, P.C., New York, New York.

For Respondents Michael Steven Martin (“Martin”) and Patrick Donnelly (“Donnelly”) (collectively, with UBS, “Respondents”): Matthew B. Baum, Esq., Ellenoff Grossman & Schole LLP, New York, New York.

Dennis L. LeFebvre (“D. LeFebvre”) appeared pro se.

CASE INFORMATION

Statement of Claim filed on or about: February 15, 2019.

Claimant signed the Submission Agreement: February 13, 2019.

Statement of Answer and Third-Party Claim filed by UBS on or about: May 1, 2019.
UBS signed the Submission Agreement: February 21, 2019.

Statement of Answer filed by Martin and Donnelly on or about: May 1, 2019.
Martin signed the Submission Agreement: April 28, 2019.
Donnelly signed the Submission Agreement: May 24, 2019.

D. LeFebvre did not file a Statement of Answer to Third-Party Claim or sign the Submission Agreement.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: violation of FINRA Rules 2010, 2020, 2150, 2165, and 4512; breach of fiduciary duty, manipulation, misrepresentation, nondisclosure, and breach of contract. The causes of action related to allegations that Respondents transferred all of the assets in accounts owned by the trust, for which Claimant was Trustee ("Trust"), into accounts owned by D. LeFebvre and closed out the accounts owned by the Trust without authorization.

Unless specifically admitted in the Statement of Answer and Third-Party Claim, UBS denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In the Third-Party Claim, UBS alleged that D. LeFebvre financially exploited the trustees of the Trust and, that if UBS is liable to Claimant for any damages, D. LeFebvre should be held liable in contribution and/or indemnification to UBS for such damages.

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

RELIEF REQUESTED

In the Statement of Claim, Claimant requested \$972,912.00 in actual damages, unspecified damages for any additional account transfers from the Trust and any lost gains from transferred accounts, punitive damages, interest, attorneys' fees, and costs of arbitration.

In the Statement of Answer and Third-Party Claim, UBS requested an award dismissing the Statement of Claim with prejudice in its entirety; granting UBS its costs in defending against the Statement of Claim; finding D. LeFebvre liable for the amount of any award, if there is any award against UBS, and such other and further relief as may be just and proper.

In the Statement of Answer, Martin and Donnelly requested that the Claimant's claim be denied in its entirety, that they be awarded their attorneys' fees and costs, that the Panel recommend expungement of any reference to this dispute from their Central Registration Depository ("CRD") registration records, and such other and further relief as the Panel deems just and proper.

At the hearing, Claimant requested damages between \$1,780,000.00 and \$2,069,000.00.

At the hearing, Martin and Donnelly requested an award of reasonable attorneys' fees against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

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

D. LeFebvre did not file a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure (“Code”) and is bound by the determination of the Panel on all issues submitted.

In an Order dated January 31, 2022, the Panel found that D. LeFebvre was not properly before the arbitration Panel and shall not be permitted to appear at the hearing as a party, but shall, however, permitted to testify if called as a witness. The Panel herein clarifies its January 31, 2022, Order dismissed UBS’s Third-Party Claim.

During the hearing, after the conclusion of Claimant’s case-in-chief, Respondents made an oral motion to dismiss (“Motion”) based on failure to present any evidence to substantiate any of the claims in the Statement of Claim, which Claimant opposed. On the record, the Panel denied the Motion.

The Panel considered Martin’s and Donnelly’s request for expungement as part of the in-person, recorded evidentiary hearing conducted in this matter.

Claimant did not oppose the request for expungement.

The Panel reviewed Martin’s and Donnelly’s BrokerCheck® Reports. The Panel noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrences in the CRD.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Statement of Claim, UBS Trust account documents; Trust certification/signature pages; Letter of Authorization for transfer of Trust accounts; durable powers of attorney and Trust amendments; and the testimony of Claimant, Martin, and Donnelly.

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. Claimant’s claims are denied in their entirety.
2. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Numbers 2020514 and 2020512) from registration records maintained by the CRD for Respondents Michael Steven Martin and Patrick Donnelly (respectively, CRD Numbers 3124679 and 2056698) with the understanding that, pursuant to Notice to Members 04-16, Respondents Michael Steven Martin and Patrick Donnelly 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.

Occurrence 2020514

Pursuant to Rule 12805 of the Code, the Panel has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is false.

Occurrence 2020512

Pursuant to Rule 12805 of the Code, the Panel has made the following Rule 2080 affirmative finding of fact:

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and

The claim, allegation, or information is false.

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

As to both Martin and Donnelly, absolutely no evidence whatsoever was introduced to support any allegations in the Statement of Claim. Hence, the Panel concluded all said allegations were false. As to Donnelly, the only evidence introduced reflected he was not personally involved in the allegations of wrongdoing stated in the Statement of Claim.

3. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, treble damages, and attorneys' fees, are denied.

FEES

Pursuant to the 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
Third-Party Claim Filing Fee	= \$	2,550.00

**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 a party, UBS is assessed the following:

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

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:

Five (5) pre-hearing sessions with the Panel @ \$1,300.00/session	= \$	6,500.00
Pre-Hearing Conferences:		
July 24, 2019	1 session	
November 5, 2019	1 session	
June 25, 2020	1 session	
April 21, 2021	1 session	
January 31, 2022	1 session	
Four (4) hearing sessions @ \$1,300.00/session	= \$	5,200.00
Hearings:		
February 7, 2022	2 sessions	
February 8, 2022	2 sessions	
<hr/> Total Hearing Session Fees	= \$	11,700.00

The Panel has assessed the total hearing session fees to Claimant.

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

ARBITRATION PANEL

Kenneth R. Starr	-	Public Arbitrator, Presiding Chairperson
Brian Patrick Quinn	-	Public Arbitrator
Jerome Blevins	-	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

Kenneth R. Starr

Kenneth R. Starr
Public Arbitrator, Presiding Chairperson

02/11/2022

Signature Date

Brian Patrick Quinn

Brian Patrick Quinn
Public Arbitrator

02/11/2022

Signature Date

Jerome Blevins

Jerome Blevins
Public Arbitrator

02/11/2022

Signature Date

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February 11, 2022

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