

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

James W. Johnston, as Trustee of the James W. Johnston Revocable Living Trust

Case Number: 19-01535

vs.

Respondent

UBS Financial Services, Inc.

Hearing Site: Boca Raton, Florida

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

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant James W. Johnston, as Trustee of the James W. Johnston Revocable Living Trust: Jeffrey B. Kaplan, Esq. and Simon Lassel, Esq., Dimond Kaplan & Rothstein, P.A., Miami, Florida.

For Respondent UBS Financial Services, Inc.: Anthony J. Borrelli, Esq., Riker, Danzig, Scherer, Hyland & Perretti, LLP, Morristown, New Jersey and David L. Goldberg, Esq., Katten Muchin Rosenman, LLP, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: May 31, 2019.

James W. Johnston, as Trustee of the James W. Johnston Revocable Living Trust signed the Submission Agreement: May 31, 2019.

Statement of Answer filed by Respondent on or about: September 5, 2019.

UBS Financial Services, Inc. signed the Submission Agreement: June 5, 2019.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: failure to treat Claimant in a just and equitable manner; breach of fiduciary duty; negligence; gross negligence; negligent misrepresentation; negligent supervision; and breach of contract. The causes of action relate to Claimant's investment in the Yield Enhancement Strategy ("YES") offering with Respondent.

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

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: damages based on fairness and equity; compensatory damages of approximately \$620,000.00; prejudgment interest at the statutory rate; costs and expenses; punitive damages in an amount sufficient to punish a corporation with the net worth of Respondent; and such other and additional relief as the Panel deemed just and proper.

In the Statement of Answer, Respondent requested: an award against Claimant dismissing the Statement of Claim in its entirety with prejudice; and expungement of this matter from the Central Registration Depository ("CRD") records of Unnamed Party Thomas Peter Wallack ("Wallack").

OTHER ISSUES CONSIDERED AND DECIDED

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

The Panel considered the expungement request during the recorded hearings by videoconference from February 22, 2021, through February 26, 2021, in which the parties presented oral argument and evidence on Unnamed Party Thomas Peter Wallack's request for expungement.

Claimant opposed the request for expungement.

The Panel reviewed Unnamed Party Thomas Peter Wallack'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 testimony of the Parties; the pleadings; 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. Claimant's claims are denied in their entirety.
2. Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages, are denied.
3. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2040579) from registration records maintained by the CRD for Unnamed Party Thomas Peter Wallack (CRD Number 1609018) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Thomas Peter Wallack 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 Panel has made the above Rule 2080 finding based on the following reasons:

The Panel heard a great deal of testimony about the YES. The Panel was impressed by the Respondent's marketing and pitch book materials, all of which clearly pointed out the high-risk nature of such an investment strategy along with the clear possibility that large investment losses were possible. The Panel heard expert testimony regarding the nature of the YES strategy, as well as the testimony of a managing director with Respondent.

Claimant is a highly sophisticated and accomplished investor, with much experience in the options investment area. Claimant claimed to have been misled as to the nature of the YES options. Claimant acknowledged having read the pitch materials, and he understood the plain language presented. Claimant's assertions that the YES options were somehow faulty, in spite of the language in the pitch materials, challenged credulity and we therefore found against him. Further, we noted there was no misconduct nor FINRA rules violations by Unnamed Party Wallack. The Panel did not find there to be a scintilla of evidence that Unnamed Party Wallack did anything wrong. Therefore, the Panel recommends the expungement of this matter from Unnamed Party Wallack's CRD record because the information or claim is false.

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 firm that employed the associated person at the time of the event giving rise to the dispute. Accordingly, as a party, Respondent UBS Financial Services, Inc. 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 Arbitrators, including a pre-hearing conference with the Arbitrators, which lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session with the Panel @ \$1,300.00/session = \$ 1,300.00
Pre-Hearing Conference: September 30, 2019 1 session

Eight (8) hearing sessions with the Panel @ \$1,300.00/session = \$ 10,400.00
Hearings: February 22, 2021 2 sessions
February 24, 2021 2 sessions
February 25, 2021 2 sessions
February 26, 2021 2 sessions

Total Hearing Session Fees = \$ 11,700.00

The Panel has assessed \$5,850.00 of the hearing session fees to Claimant.

The Panel has assessed \$5,850.00 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

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|----------------------|---|--|
| Richard Carl Smukler | - | Public Arbitrator, Presiding Chairperson |
| James W. Geiger | - | Public Arbitrator |
| Thomas Richard Blake | - | 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 Carl Smukler

Richard Carl Smukler
Public Arbitrator, Presiding Chairperson

03/12/2021

Signature Date

James W. Geiger

James W. Geiger
Public Arbitrator

03/12/2021

Signature Date

Thomas Richard Blake

Thomas Richard Blake
Public Arbitrator

03/12/2021

Signature Date

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March 12, 2021

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