

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Keith and Teresa Lilek, as Trustees of the
Keith J. Lilek Declaration of Trust and the
Teresa Lilek Declaration of Trust

Case Number: 19-02278

vs.

Respondent

UBS Financial Services Inc.

Hearing Site: Kansas City, Missouri

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

This case was decided by a majority-public panel.

REPRESENTATION OF PARTIES

For Claimants Keith and Teresa Lilek, as Trustees of the Keith J. Lilek Declaration of Trust and the Teresa Lilek Declaration of Trust (“Claimants”): Jacob H. Zamansky, Esq., Zamansky, LLC, New York, New York.*

For Respondent UBS Financial Services Inc. (“Respondent”): Anthony J. Borrelli, Esq., Riker Danzig Scherer Hyland Perretti LLP, Morristown, New Jersey.

*FINRA recorded the appearance of Claimants’ counsel at the time of filing of the Statement of Claim. Counsel’s representation of Claimants may have ended with the parties’ settlement. Please see the Other Issues Considered and Decided section of this Award for information on whether Claimants’ counsel appeared at the expungement hearing.

CASE INFORMATION

Statement of Claim filed on or about: August 13, 2019.

Claimants signed the Submission Agreement: July 26, 2019.

Statement of Answer filed on or about: November 18, 2019.

Respondent signed the Submission Agreement: August 14, 2019.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: fraud, misrepresentation, unsuitability, breach of fiduciary duty, and breach of contract. The causes of action relate to Claimants' allegation that Respondent presented the Yield Enhancement Strategy ("YES"), a managed account options strategy, as low-risk when it was actually highly speculative.

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, Claimants requested equitable relief of rescission of all trading losses, mandates, and disgorgement of all fees received by Respondent; compensatory damages of approximately \$500,000.00, including recovery of all trading losses and fees received by Respondent; recovery of pre- and post-award interest, costs, expenses, attorneys' fees, expert fees, and forum fees of this arbitration; and punitive damages in such amount as this Panel deems appropriate and just to punish and deter Respondent from any future similar conduct.

In the Statement of Answer, Respondent requested that the Statement of Claim be dismissed in its entirety with prejudice and such other and further relief as the Panel deems just and proper. Further, Respondent requested expungement, on behalf of Unnamed Party David Hirsch ("Hirsch"), of all references to this matter from registration records maintained by the Central Registration Depository ("CRD").

OTHER ISSUES CONSIDERED AND DECIDED

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

On November 24, 2020, Claimants filed notice of final settlement and voluntary dismissal with prejudice. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

On December 1, 2020, Respondent filed notice of its request to pursue expungement and requested that the matter remain open for consideration of its expungement request. On December 10, 2020, Claimants filed correspondence advising that they do not oppose Respondent's expungement request on behalf of Hirsch.

On December 17, 2020, Respondent filed a Petition for Expungement, to which no response was filed.

The Panel conducted a recorded, telephonic hearing on January 6, 2021, so the parties could present oral argument and evidence on Respondent's request for expungement on behalf of Hirsch.

Neither Claimants nor their counsel participated in the expungement hearing.

The Panel reviewed the BrokerCheck® Report for Hirsch. The Panel noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrence in CRD.

The Panel also reviewed the settlement documents, considered the amount of payments made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Panel noted that the settlement was not conditioned on any party to the settlement not opposing the request for expungement and that Hirsch did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Hirsch's testimony, the pleadings, and Exhibits A through X in Respondent's Petition 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:

The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2045028) from registration records maintained by the CRD for Unnamed Party David Allan Hirsch (CRD Number 1341777) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party David Allan Hirsch 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 findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; and

The claim, allegation, or information is false.

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

Hirsch testified that he provided financial advisory services to Claimants while employed by another firm. He joined Respondent in March 2016, and Claimants remained his clients. At that time, Claimants reviewed, with Hirsch, written documents and agreements, which clearly disclosed the risks of the investment strategies that were being initiated. The investment strategies chosen by Claimants replicated the strategies that were in place at the prior firm and were

intended to increase the portfolio's cash flow. Claimants elected to utilize the YES program as a small component of their overall investment portfolio. Hirsch testified that Claimants wanted to generate income for their personal expenses that was similar to the income generated at the prior firm. The YES strategy was profitable until late 2018, when extreme market volatility resulted in losses.

Expungement is recommended, as the Panel finds that Claimants' allegations are factually impossible and clearly erroneous. Claimants received and executed written disclosures and agreements, which clearly set forth the terms, features and risks of the YES program. In addition, the Panel finds that Claimants' allegations are false. Claimants knowingly chose an investment strategy that was high risk, rather than a conservative strategy.

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	= \$	1,425.00
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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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Respondent 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:

November 2-6, 2020, postponement requested by the parties	= \$	1,125.00
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Total Postponement Fees	= \$	1,125.00
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The Panel has assessed \$562.50 of the postponement fees jointly and severally to Claimants.

The Panel has assessed \$562.50 of the postponement fees Respondent.

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:

November 2-6, 2020, cancellation requested by the parties	= \$	1,800.00
Total Last-Minute Cancellation Fees	= \$	1,800.00

The Panel has assessed \$900.00 of the last-minute cancellation fees jointly and severally to Claimants.

The Panel has assessed \$900.00 of the last-minute cancellation fees to Respondent.

Discovery-Related Motion Fees

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

One (1) decision on a discovery-related motion on the papers = \$ 200.00
with one (1) Arbitrator @ \$200.00/decision

Claimants submitted one (1) discovery-related motion

Total Discovery-Related Motion Fees = \$ 200.00

The Panel has assessed \$100.00 of the discovery-related motion fees jointly and severally to Claimants.

The Panel has assessed \$100.00 of the discovery-related motion fees to Respondent.

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:

One (1) pre-hearing session with a single Arbitrator @ \$450.00/session = \$ 450.00
Pre-Hearing Conference: August 12, 2020 1 session

= \$ 2,250.00

Two (2) pre-hearing sessions with the Panel @ \$1,125.00/session
Pre-hearing Conferences: December 13, 2019 1 session
October 19, 2020 1 session

One (1) hearing session on expungement request @ \$1,125.00/session = \$ 1,125.00
Hearing Date: January 6, 2021 1 session

Total Hearing Session Fees = \$ 3,825.00

The Panel has assessed \$1,350.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$2,475.00 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

David A. Schuler	-	Public Arbitrator, Presiding Chairperson
Lawrence R. Rute	-	Public Arbitrator
Patricia Joanne Branco	-	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

David A. Schuler

David A. Schuler
Public Arbitrator, Presiding Chairperson

01/20/2021

Signature Date

Lawrence R. Rute

Lawrence R. Rute
Public Arbitrator

01/20/2021

Signature Date

Patricia Joanne Branco

Patricia Joanne Branco
Non-Public Arbitrator

01/19/2021

Signature Date

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January 20, 2021

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