

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimants

David M. Farrell and Holly H. Farrell

Case Number: 19-02728

vs.

Respondent

UBS Financial Services Inc.

Hearing Site: Dallas, Texas

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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 an all-public panel.

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimants David M. Farrell and Holly H. Farrell (“Claimants”): Samuel Bonderoff, Esq, Zamansky, LLC, New York, New York.

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

**CASE INFORMATION**

Statement of Claim filed on or about: September 11, 2019.  
Claimants signed the Submission Agreement: September 10, 2019.

Statement of Answer filed on or about: December 16, 2019.  
Respondent signed the Submission Agreement: September 16, 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 under the federal securities laws, FINRA regulations, Texas securities statutes, and Texas common law; omissions; respondeat superior; control person liability; and failure to supervise and train. The causes of action related to Claimants’ allegation that Respondent recommended a highly speculative managed account options strategy product, the Yield Enhancement Strategy

("YES"), which was unsuitable and inappropriate for Claimants' investment needs and objectives.

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 and margin interest received by Respondent; compensatory damages of approximately \$500,000.00, including recovery of all trading losses, tax liabilities incurred, margin interest paid 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 Panel dismiss the Statement of Claim in its entirety and with prejudice; expungement, on behalf of Unnamed Parties Matthew Lasko ("Lasko") and Scott Rosenberg ("Rosenberg"), of all references to this matter from Central Registration Depository ("CRD") registration records; and such other and further relief as the Panel deems just and proper.

### **OTHER ISSUES CONSIDERED AND DECIDED**

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

The evidentiary hearing included oral arguments on Respondent's request for expungement on behalf of Lasko. Claimants opposed Respondent's request for expungement on behalf of Lasko. Respondent did not pursue its request for expungement on behalf of Rosenberg. Accordingly, the Panel made no determination as to Respondent's request for expungement on behalf of Rosenberg.

The Panel reviewed Lasko'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 offered at the hearing, including the testimony of David M. Farrell, Megan Smith, Lasko, and Rosenberg and the documents offered at the hearing, including the documents explaining the YES.

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 2048462) from registration records maintained by the CRD for Unnamed Party Matthew Edward Lasko (CRD Number 4427806) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Matthew Edward Lasko 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 finding based on the following reasons:

The investment was not unsuitable. It was adequately explained to the customer. There were no misrepresentations and there were no omissions that would have changed the outcome of the case.

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 = \$ 1,425.00

*\*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, 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:

December 6-10, 2021, postponement requested by parties	= \$ 1,125.00
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Total Postponement Fees	= \$ 1,125.00

The Panel has assessed the total postponement 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 the Panel @ \$1,125.00/session	= \$ 1,125.00
Pre-Hearing Conference: January 8, 2020	1 session
Nine (9) hearing sessions @ \$1,125.00/session	= \$ 10,125.00
Hearings:	
December 13, 2021	2 sessions
December 14, 2021	2 sessions
December 15, 2021	2 sessions
December 16, 2021	1 session
December 17, 2021	2 sessions
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Total Hearing Session Fees	= \$ 11,250.00

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

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

**ARBITRATION PANEL**

Karen Roberts Washington	-	Public Arbitrator, Presiding Chairperson
Andrea U. Calve	-	Public Arbitrator
Don G Miller	-	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**

***Karen Roberts Washington***

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Karen Roberts Washington  
Public Arbitrator, Presiding Chairperson

**12/30/2021**

\_\_\_\_\_  
Signature Date

***Andrea U. Calve***

\_\_\_\_\_  
Andrea U. Calve  
Public Arbitrator

**12/30/2021**

\_\_\_\_\_  
Signature Date

**Dissenting Arbitrator's Signature**

***Don G Miller***

\_\_\_\_\_  
Don G Miller  
Public Arbitrator

\_\_\_\_\_  
Signature Date

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December 30, 2021

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