

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Michael Alan Azzarelli

Case Number: 19-02920

vs.

Respondent
UBS Financial Services Inc.

Hearing Site: Tampa, 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.

REPRESENTATION OF PARTIES

For Claimant Michael Alan Azzarelli (“Claimant”): Robert C. Stokes, III, Esq., Robert C. Stokes III, P.A., Tampa, Florida.*

For Respondent UBS Financial Services Inc. (“Respondent”): Omar Perez, Esq., UBS Business Solutions US LLC, Nashville, Tennessee.

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

CASE INFORMATION

Statement of Claim filed on or about: September 30, 2019.
Claimant signed the Submission Agreement: September 27, 2019.

Statement of Answer filed on or about: January 2, 2020.
Respondent signed the Submission Agreement: October 2, 2019.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: common law fraud, breach of fiduciary duty, breach of contract, breach of the implied covenant of good faith and fair dealing, fraudulent inducement including misstatements and omissions, negligence, gross

negligence, suitability, violation of firm policy, violation of FINRA Rules, and negligent supervision. The causes of action related to Claimant's allegation that Respondent and its financial advisors violated fiduciary and suitability obligations, through bad advice, fraudulent margin accounts, excessive mortgage rates, line of credit interest fees, and management fees.

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 compensatory damages of \$1,000,000.00, interest at the legal rate from the date of the transactions or reasonable market return, rescission, punitive damages, a return of investment advisory fees incurred, costs of this proceeding, and such other and further relief as the Panel deems just and proper.

In the Statement of Answer, Respondent requested an award against Claimant dismissing the Statement of Claim in its entirety and with prejudice; expungement, on behalf of Unnamed Party James Scott Knight ("Knight"), 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.

On November 26, 2021, Respondent filed a Motion for Expungement on behalf of Knight, to which no response was filed.

On December 8, 2021, Claimant filed a notice of dismissal with prejudice. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

The Panel conducted a recorded, telephonic on January 12, 2022, so the parties could present oral argument and evidence on Respondent's request for expungement on behalf of Knight.

Neither Claimant nor Claimant's counsel participated in the expungement hearing.

The Panel reviewed Knight'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.

The Panel also reviewed the settlement documentation, considered the amount of payment 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 Knight did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Motion for Expungement, Knight's testimony, and additional documents submitted by Respondent.

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 2050467) from registration records maintained by the CRD for Unnamed Party James Scott Knight (CRD Number 4365852) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party James Scott Knight 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:

Having heard all the evidence presented on behalf of Knight and thoroughly examined the submitted documents, the Panel decided that the claim brought against Knight by Claimant meets the Rule 2080 standard of "factually impossible." The evidence demonstrated that Knight did not have the requisite legal authority to advise Claimant regarding mortgages and the financing or refinancing thereof. The evidence also demonstrated that mortgage financing was handled by an entirely different and separate part of Respondent than the one that employed Knight. Lastly, Knight was not Claimant's financial advisor at the time Claimant applied for and received the initial mortgage that was then refinanced several times.

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

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 9-12, 2021, settled by the parties	= \$	1,800.00
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Total Last-Minute Cancellation Fees	= \$	1,800.00

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

The Panel has assessed \$900.00 of the last-minute cancellation 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:

Two (2) pre-hearing sessions with a single Arbitrator @ \$450.00/session	= \$	900.00
Pre-Hearing Conferences: July 30, 2020	1 session	
October 26, 2021	1 session	
Two (2) pre-hearing sessions with the Panel @ \$1,300.00/session	= \$	2,600.00
Pre-Hearing Conferences: January 29, 2020	1 session	
September 22, 2020	1 session	
One (1) hearing session on expungement request @ \$1,300.00/session	= \$	1,300.00
Hearing: January 12, 2022	1 session	
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Total Hearing Session Fees	= \$	4,800.00

The Panel has assessed \$1,975.00 of the hearing session fees to Claimant.

The Panel has assessed \$2,825.00 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Vlad Gerard Spitzer	-	Public Arbitrator, Presiding Chairperson
Brian Patrick Quinn	-	Public Arbitrator
Jason Paul Ramos	-	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

Vlad Gerard Spitzer

Vlad Gerard Spitzer
Public Arbitrator, Presiding Chairperson

01/24/2022

Signature Date

Brian Patrick Quinn

Brian Patrick Quinn
Public Arbitrator

01/24/2022

Signature Date

Jason Paul Ramos

Jason Paul Ramos
Public Arbitrator

01/25/2022

Signature Date

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January 25, 2022

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