

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Madeleine Porcelli

Case Number: 19-02953

vs.

Respondent
UBS Financial Services, Inc.

Hearing Site: New York, New York

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 Madeleine Porcelli: Jeffrey B. Kaplan, Esq., Dimond Kaplan & Rothstein, P.A., Miami, Florida.

For Respondent UBS Financial Services, Inc.: David L. Goldberg, Esq., Katten Muchin Rosenman LLP, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: October 1, 2019.

Madeleine Porcelli signed the Submission Agreement: October 1, 2019.

Statement of Answer filed by Respondent on or about: January 6, 2020.

UBS Financial Services Inc. signed the Submission Agreement: October 8, 2019.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: breach of fiduciary duty; negligence; gross negligence; negligent misrepresentation; negligent supervision; and breach of contract. The causes of action relate to UBS Financial Services, Inc.'s Yield Enhancement Strategy ("YES") Options Program.

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 \$750,000.00; 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 may deem 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 of all references to the above-captioned arbitration from the registration records of Unnamed Parties Christopher Tolman and John DeRosa maintained by the Central Registration Depository ("CRD"), as well as any and all associated persons who may be affected by this claim; and for such other and further relief as the Panel deems just and proper.

At the close of hearing, Claimant requested \$992,043.49 in compensatory damages, inclusive of prejudgment interest.

At the close of hearing, Respondent requested dismissal of Claimant's claims in their entirety; expungement of all references to the above-captioned arbitration from the registration records of Unnamed Party Christopher Tolman maintained by the CRD; and an assessment of all FINRA forum costs and fees against Claimant.

Respondent, in its Statement of Answer, also requested expungement on behalf of Unnamed Party John DeRosa, as well as any and all associated persons who may be affected by this claim. Respondent did not pursue this request at the hearing. Therefore, the Panel made no determination on Respondent's request for expungement of all references to the above-captioned arbitration from the registration records of Unnamed Party John DeRosa maintained by the CRD.

OTHER ISSUES CONSIDERED AND DECIDED

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

The Panel reviewed Christopher Tolman's BrokerCheck® Report and 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 Statement of Claim, Unnamed Party Christopher Tolman's testimony, Respondent's exhibits, the testimony of other witnesses, and the evidence presented at the hearing.

AWARD

After considering the pleadings, the testimony and evidence presented at the recorded 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 Number 2053492) from registration records maintained by the CRD for Unnamed Party Christopher Tolman (CRD Number 2066775) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Christopher Tolman 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 registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

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

The Panel found that in the Statement of Claim, Claimant expressly absolved the UBS Financial Services, Inc. broker, Christopher Tolman, from responsibility. The Panel found that as the broker of record for Claimant's account, Christopher Tolman presented the Program to Claimant, including the risks of the investments, in the way Respondent had represented it to him. The Panel found that Christopher Tolman made no independent determination relating to the program in question.

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

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
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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 that employed the associated person at the time of the events 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 a single Arbitrator @ \$450.00/session	= \$	450.00
Pre-Hearing Conference: December 23, 2020	1 session	
One (1) pre-hearing session with the Panel @ \$1,300.00/session	= \$	1,300.00
Pre-Hearing Conference: January 13, 2020	1 session	
Ten (10) hearing sessions @ \$1,300.00/session	= \$	13,000.00
Hearings:		
February 1, 2021	2 sessions	
February 2, 2021	2 sessions	
February 3, 2021	2 sessions	
February 4, 2021	2 sessions	
February 5, 2021	2 sessions	

Total Hearing Session Fees	= \$	14,750.00
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The Panel has assessed \$1,100.00 of the hearing session fees to Claimant.

The Panel has assessed \$13,650.00 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Mary P. Bass	-	Public Arbitrator, Presiding Chairperson
Robert E. Riccobono	-	Public Arbitrator
Lawrence Williams	-	Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

Concurring Arbitrators' Signatures

Mary P. Bass

Mary P. Bass
Public Arbitrator, Presiding Chairperson

02/26/2021

Signature Date

Robert E. Riccobono

Robert E. Riccobono
Public Arbitrator

02/26/2021

Signature Date

Lawrence Williams

Lawrence Williams
Public Arbitrator

02/26/2021

Signature Date

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February 26, 2021

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