

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

UBS Financial Services Inc. and UBS Credit Corp.

Case Number: 20-00222

vs.

Respondent

Kenneth Frank Senvisky

Hearing Site: Cleveland, Ohio

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: Member and Non-Member vs. Associated Person

This case was decided by a majority-public panel.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimants UBS Financial Services Inc. and UBS Credit Corp. (collectively “Claimants”):
Anthony J. Borrelli, Esq. and Hunt S. Ricker, Esq., Riker Danzig LLP, Morristown, New Jersey.

For Respondent Kenneth Frank Senvisky (“Respondent”): Jeffrey C. Miller, Esq. and Russell T. Rendall, Esq., Brennan Manna & Diamond LLC, Cleveland, Ohio.

CASE INFORMATION

Statement of Claim filed on or about: January 22, 2020.

Answer to Counterclaim filed on or about: April 6, 2020.

Claimants signed the Submission Agreement: January 21, 2020.

Statement of Answer and Counterclaim filed on or about: March 9, 2020.

Respondent signed the Submission Agreement: March 9, 2020.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following cause of action: breach of promissory notes. Claimants alleged that they loaned funds to Respondent, as evidenced by nine promissory notes dated November 17, 2011 (“Note 5504”), February 24, 2012 (“Note 8050”), May 18, 2012 (“Note 8785”), August 14, 2012 (“Note 9339”), November 19, 2012 (“Note

9660”), February 27, 2013 (“Note 10136”), May 28, 2013 (“Note 10593”), August 28, 2013 (“Note 11019”), and February 25, 2016 (“Note 15054”) collectively (“Notes”). Claimants further alleged that when Respondent’s employment with Claimants ended on August 12, 2016, the Notes became immediately due and payable.

Unless specifically admitted in the Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In the Counterclaim, Respondent asserted the following causes of action: fraudulent inducement, constructive fraud, promissory estoppel, negligent misrepresentation, and breach of contract – duty of good faith and fair dealing. The causes of action related to Respondent’s allegation that Claimants and their attorneys made errors and misrepresentations regarding the applicability of the FINRA Protocol, which resulted in substantial loss of assets under management and a corresponding loss of earnings for Respondent.

Unless specifically admitted in the Statement of Answer to the Counterclaim, Claimants denied the allegations made in the Counterclaim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested \$419,913.15 for the principal amounts due and owing under the Notes, plus interest, late fees, costs, attorneys’ fees and expenses, and for such other and further relief as the Panel deems just and equitable.

In the Statement of Answer and Counterclaim, Respondent requested the dismissal of Claimants’ Statement of Claim in its entirety; rescinding the agreements and Notes related to his employment with Claimants; damages against Claimants related to their fraudulent inducement, constructive fraud, and negligent misrepresentations; and any further relief deemed appropriate.

In the Statement of Answer to the Counterclaim, Claimants requested the Panel dismiss Respondent’s Counterclaim in its entirety, with prejudice; and for such other and further relief as the Panel deems just and equitable.

OTHER ISSUES CONSIDERED AND DECIDED

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

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. For Note 5504, Respondent is liable for and shall pay to Claimants:
 - a) the sum of \$332,308.20 in compensatory damages;
 - b) interest on the above-stated sum at the rate of 1.45% from August 12, 2016, through and including the date the Award is paid in full; and

- c) accrued interest in the amount of \$23,321.34.
2. For Note 8050, Respondent is liable for and shall pay to Claimants:
 - a) the sum of \$29,321.65 in compensatory damages;
 - b) interest on the above-stated sum at the rate of 1.34% from August 12, 2016, through and including the date the Award is paid in full; and
 - c) accrued interest in the amount of \$1,899.87.
 3. For Note 8785, Respondent is liable for and shall pay to Claimants:
 - a) the sum of \$6,937.18 in compensatory damages;
 - b) interest on the above-stated sum at the rate of 1.57% from August 12, 2016, through and including the date the Award is paid in full; and
 - c) accrued interest in the amount of \$522.90.
 4. For Note 9339, Respondent is liable for and shall pay to Claimants:
 - a) the sum of \$23,882.48 in compensatory damages;
 - b) interest on the above-stated sum at the rate of 1.06% from August 12, 2016, through and including the date the Award is paid in full; and
 - c) accrued interest in the amount of \$1,220.10.
 5. For Note 9660, Respondent is liable for and shall pay to Claimants:
 - a) the sum of \$2,457.04 in compensatory damages;
 - b) interest on the above-stated sum at the rate of 1.07% from August 12, 2016, through and including the date the Award is paid in full; and
 - c) accrued interest in the amount of \$122.01.
 6. For Note 10136, Respondent is liable for and shall pay to Claimants:
 - a) the sum of \$1,339.04 in compensatory damages;
 - b) interest on the above-stated sum at the rate of 1.21% from August 12, 2016, through and including the date the Award is paid in full; and
 - c) accrued interest in the amount of \$87.15.
 7. For Note 10593, Respondent is liable for and shall pay to Claimants:
 - a) the sum of \$3,618.44 in compensatory damages;
 - b) interest on the above-stated sum at the rate of 1.2% from August 12, 2016, through and including the date the Award is paid in full; and
 - c) accrued interest in the amount of \$209.16.
 8. For Note 11019, Respondent is liable for and shall pay to Claimants:
 - a) the sum of \$2,506.29 in compensatory damages;
 - b) interest on the above-stated sum at the rate of 1.93% from August 12, 2016, through and including the date the Award is paid in full; and
 - c) accrued interest in the amount of \$226.59.
 9. For Note 15054, Respondent is liable for and shall pay to Claimants:
 - a) the sum of \$17,542.83 in compensatory damages;
 - b) interest on the above-stated sum at the rate of 2.16% from August 12, 2016, through and including the date the Award is paid in full; and
 - c) accrued interest in the amount of \$1,830.15.

- 10. Respondent is liable for and shall pay to Claimants the sum of \$120,000.00 in attorneys' fees pursuant to the terms of the Notes.
- 11. Respondent's Counterclaim is denied.
- 12. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages and treble damages, are denied.

FEES

Pursuant to the Code of Arbitration Procedure, the following fees are assessed:

Filing Fees

FINRA Dispute Resolution Services assessed a filing fee* for each claim:

Initial Claim Filing Fee	=\$ 2,125.00
Counterclaim Filing Fee	=\$ 1,575.00

**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, UBS Financial Services, Inc. assessed the following:

Member Surcharge	=\$ 1,900.00
Member Process Fee	=\$ 3,750.00

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 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: May 21, 2020	1 session
Four (4) hearing sessions @ \$1,125.00/session	
Hearings: May 18, 2021	2 sessions
May 19, 2021	1 session
May 20, 2021	1 session
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Total Hearing Session Fees	=\$ 5,625.00

The Panel has assessed \$2,812.50 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$2,812.50 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Kevin Brodar	-	Public Arbitrator, Presiding Chairperson
Robert H. Baker	-	Public Arbitrator
Robert M. Shwab	-	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

Kevin Brodar

Kevin Brodar
Public Arbitrator, Presiding Chairperson

08/10/2021

Signature Date

Robert H. Baker

Robert H. Baker
Public Arbitrator

08/10/2021

Signature Date

Robert M. Shwab

Robert M. Shwab
Non-Public Arbitrator

08/10/2021

Signature Date

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August 10, 2021

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