

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Elizabeth Ann Bennett, as Trustee of the
Elizabeth Ann Bennett Trust and
Samuel Lynn Bennett, as Trustee of the
Samuel Lynn Bennett Trust

Case Number: 20-01035

vs.

Respondent

UBS Financial Services Inc.

Hearing Site: Chicago, Illinois

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 Elizabeth Ann Bennett, as Trustee of the Elizabeth Ann Bennett Trust and Samuel Lynn Bennett, as Trustee of the Samuel Lynn Bennett Trust (collectively “Claimants”): Jeffrey B. Kaplan, Esq. and Simon Lassell, Esq., Dimond Kaplan & Rothstein, P.A., Miami, Florida.

For Respondent UBS Financial Services Inc. (“Respondent”): David L. Goldberg, Esq. and Brian L. Muldrew, Esq., Katten Muchin Rosenman LLP, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: March 30, 2020.

Amended Statement of Claim filed on or about: June 10, 2020

Claimants signed the Submission Agreement: March 27, 2020.

Statement of Answer filed on or about: June 18, 2020.

Respondent signed the Submission Agreement: June 22, 2020.

CASE SUMMARY

In the Statement of Claim, as amended, Claimants asserted the following causes of action: negligence, gross negligence, negligent misrepresentation, breach of fiduciary duty, breach of contract, negligent supervision, and violation of Illinois Securities Law of 1953. The causes of action relate to Claimants' allegation that, rather than recommending suitable investments and fully and fairly disclosing to Claimants all material information about its investments, Respondent recommended to Claimants its "Yield Enhancement Strategy" ("YES"), a risky, complex options strategy that subjected Claimants to significant risk of loss, all while claiming that YES was low risk and not correlated to the markets.

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, as amended, Claimants requested damages based on fairness and equity; compensatory damages of \$890,000.00; prejudgment interest at the statutory rate; attorneys' fees, costs, and expenses; punitive damages; and such other and additional relief as the Panel may deem just and proper.

In the Statement of Answer, Respondent requested an award dismissing the Statement of Claim in its entirety and with prejudice; expungement of all references to this matter from Central Registration Depository ("CRD") registration records for Unnamed Parties Richard Held ("Held"), Ortal Shachar ("Shachar"), Gerard Costello ("Costello"), and any and all associated persons who may be affected by Claimants' claim; and such other and further relief as the Panel deems just and proper.

At the hearing, Claimant requested compensatory damages of \$891,134.00, prejudgment interest of \$120,608.30, attorneys' fees of \$217,980.00, FINRA costs of \$1,725.00, expert costs of \$24,250.00, and punitive damages of \$2,673,402.00.

OTHER ISSUES CONSIDERED AND DECIDED

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

On June 10, 2020, Claimant filed an Agreed Motion to File Amended Statement of Claim ("Motion to Amend"). In an Order dated July 28, 2020, the Panel granted the Motion to Amend.

The Panel considered Respondent's request for expungement on behalf of Held and Shachar as part of the in-person, recorded evidentiary hearing conducted in this matter.

Claimants opposed Respondent's request for expungement on behalf of Held and Shachar.

The Panel reviewed Held and Shachar's BrokerCheck® Reports. The Panel noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrences in the CRD.

The Panel noted that there was no settlement in this case and therefore, there were no settlement documents to review.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Claimants' testimony; Shachar's testimony, D.D.'s testimony, and documents submitted at hearing.

Respondent did not pursue its request for expungement on behalf of Costello at the evidentiary hearing. Accordingly, the Panel made no determination on the issue of expungement with respect to Costello.

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 Numbers 2072798 and 2072807) from registration records maintained by the CRD for Unnamed Parties Richard Mark Held and Ortal Shachar (CRD Numbers 600760 and 2940760) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Parties Richard Mark Held and Ortal Shachar 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:

Claimants brought the complaint against Respondent alone. The Statement of Claim said the Respondent misrepresented risks involved with the account. No individuals were named.

The Concurring Arbitrators found that Held and Shachar did not misrepresent the risks and that all documents signed by the Claimants accurately acknowledged the risks. Further, the testimony of Claimant represented that Held and Shachar did nothing wrong. Claimants testified that Held and Shachar were not to blame.

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

Dissenting Opinion

Chairman Buschmann dissented based on his finding that Claimants were not high-risk investors which Respondent knew, and Respondent failed to provide to Claimants fair, full and timely disclosure of the risk of substantial loss from the investment it promoted and sold to them.

Chairman Buschmann concluded that Held and Shachar were directly involved in the promotion, solicitation and sale of the YES strategy to Claimants, although relying on the material, representations and direction of the Respondent USB. Therefore, Chairman Buschmann does not see where the claim is clearly erroneous, the registered persons were not involved, or the allegation is false, which are the findings required for expungement.

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

**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

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 @ \$1,300.00/session = \$ 1,300.00
Pre-Hearing Conference: July 28, 2020 1 session

Ten (10) hearing sessions @ \$1,300.00/session = \$ 13,000.00
Hearings: July 12, 2021 2 sessions
July 13, 2021 2 sessions
July 14, 2021 2 sessions
July 15, 2021 2 sessions
July 16, 2021 2 sessions

Total Hearing Session Fees = \$ 14,300.00

The Panel has assessed \$7,150.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$7,150.00 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Raymond P. Buschmann	-	Public Arbitrator, Presiding Chairperson
Marcia Bonita Gevers	-	Public Arbitrator
Alexis Anne Washa	-	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.

Dissenting Arbitrator's Signature

Raymond P. Buschmann

Raymond P. Buschmann
Public Arbitrator, Presiding Chairperson

08/19/2021

Signature Date

Concurring Arbitrators' Signatures

Marcia Bonita Gevers

Marcia Bonita Gevers
Public Arbitrator

08/19/2021

Signature Date

Alexis Anne Washa

Alexis Anne Washa
Public Arbitrator

08/19/2021

Signature Date

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August 20, 2021

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