

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Carl H. Amon III

Case Number: 20-01323

vs.

Respondent
UBS Financial Services Inc.

Hearing Site: Salt Lake City, Utah

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 Carl H. Amon III (“Claimant”): Jacob H. Zamansky, Esq. and Sam Bonderoff, Esq., Zamansky, LLC, New York, New York.

For Respondent UBS Financial Services Inc. (“Respondent”): Melissa J. Gworek, Esq. and David Goldberg, Esq., UBS Business Solutions US LLC, Nashville, Tennessee.

CASE INFORMATION

Statement of Claim filed on or about: April 27, 2020.

Claimant signed the Submission Agreement: April 27, 2020.

Statement of Answer filed by Respondent on or about: August 3, 2020.

Respondent signed the Submission Agreement: April 28, 2020.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: fraud; misrepresentation; unsuitability; unsuitable product; breach of fiduciary duty; negligence; and breach of contract under the federal securities laws, FINRA regulations, Wyoming state securities laws and applicable common law. The causes of action relate to investments in the Yield Enhancement Strategy (“YES”) product from Respondent.

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:

1. Rescission of all trading losses, mandates and disgorgement of all margin interest and fees received by Respondent;
2. Compensatory damages of approximately \$1.2 million, including recovery of all trading losses, margin interest and fees received by Respondent and well-managed account damages;
3. Pre and post award interest, costs, expenses, attorneys' fees, expert fees, and forum fees of this arbitration; and
4. Punitive damages in such amount as the Panel deems appropriate and just to punish and deter Respondent from any future similar conduct.

In the Statement of Answer, Respondent requested:

1. An award against Claimant dismissing the Statement of Claim in its entirety and with prejudice;
2. Expungement of this matter from the Central Registration Depository ("CRD") records of Unnamed Party Mark Zeller ("Zeller") and Unnamed Party Matthew Buchsbaum ("Buchsbaum"); and
3. 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 Panel reviewed Zeller and Buchsbaum's respective BrokerCheck® Reports. Claimant opposed the requests for expungement.

In recommending expungement, the Panel relied upon the following documentary or other evidence: testimony of Buchsbaum and Zeller as to their participation and the manner in which they conducted their activities; Buchsbaum and Zeller's respective BrokerCheck® Reports; Claimant's testimony; documentation respecting disclosures and presentations by Respondent and its representatives, signed by Claimant; and Claimant's agreements with Respondent respecting his participation in the YES program.

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. Claimant's claims are denied in their entirety.

2. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2074849) from registration records maintained by the CRD for Unnamed Party Mark Allen Zeller (CRD Number 2263684) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Mark Allen Zeller must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

The Panel also recommends the expungement of all references to the above captioned arbitration (Occurrence Number 2074952) from registration records maintained by the CRD for Unnamed Party Matthew Stern Buchsbaum (CRD Number 2220565) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Matthew Stern Buchsbaum 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 false.

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

Neither Respondent nor its licensees (including Zeller and Buchsbaum) acted inappropriately.

3. Any and all claims for relief not specifically addressed herein, including any requests for punitive 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 = \$ 2,000.00

**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 = \$ 3,025.00

Member Process Fee = \$ 6,175.00

Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

September 27 – October 1, 2021, postponement requested by parties = WAIVED

Discovery-Related Motion Fees

Fees apply for each decision rendered on a discovery-related motion.

One (1) decision on a discovery-related motion on the papers with one (1) Arbitrator @ \$200.00/decision = \$ 200.00

Claimant submitted one (1) discovery-related motion

Total Discovery-Related Motion Fees = \$ 200.00

The Panel has assessed the total discovery-related motion 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 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 the Panel @ \$1,400.00/session = \$ 1,400.00
Pre-Hearing Conference: August 14, 2020 1 session

Seven (7) hearing sessions @ \$1,400.00/session = \$ 9,800.00
Hearings: October 12, 2021 2 sessions
October 13, 2021 2 sessions
October 14, 2021 2 sessions
October 15, 2021 1 session

Total Hearing Session Fees = \$ 11,200.00

The Panel has assessed \$9,800.00 of the hearing session fees to Claimant.

The Panel has assessed \$1,400.00 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Jeffrey M. Allen	-	Public Arbitrator, Presiding Chairperson
Jon Richard Catten	-	Public Arbitrator
Leon Werner Crockett	-	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

Jeffrey M. Allen

Jeffrey M. Allen
Public Arbitrator, Presiding Chairperson

11/09/2021

Signature Date

Jon Richard Catten

Jon Richard Catten
Public Arbitrator

11/09/2021

Signature Date

Leon Werner Crockett

Leon Werner Crockett
Public Arbitrator

11/09/2021

Signature Date

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November 09, 2021

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