

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Denice Azar, Trustee for
Denice Azar Revocable Trust

Case Number: 20-01343

vs.

Respondent

UBS Financial Services, Inc.

Hearing Site: Pittsburgh, Pennsylvania

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 Denice Azar, Trustee for Denice Azar Revocable Trust (“Claimant”): Scott A. Lane, Esq., Law Office of Scott Lane, LLC, Ingomar, Pennsylvania.*

For Respondent UBS Financial Services, Inc. (“Respondent”): Omar Perez, Esq., UBS Business Solutions US LLC, Nashville, Tennessee and David E. Robbins, Esq., Kaufmann Gildin & Robbins LLP, New York, New York.

*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: April 28, 2020.

Claimant signed the Submission Agreement: April 18, 2020.

Statement of Answer filed on or about: July 30, 2020.

Respondent signed the Submission Agreement: May 5, 2020.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: negligence/unsuitability, violations of FINRA Rules 2010 and 2020, violation of Massachusetts Uniform Securities Act, breach of contract, negligent supervision, and respondeat superior. The causes of action related to Claimant's allegation that Respondent's registered representative, which it failed to supervise, made unsuitable recommendations of securities in Claimant's account.

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 in the amount to be determined at hearing, but in the amount of at least \$172,534.00; consequential damages, including but not limited to lost investment opportunities and other harm resulting from Respondent's acts; pre- and post-judgment interest at the legal rate; punitive damages in an amount to be determined at hearing; attorneys' fees, including costs and expenses; and such other and further relief as the Panel deems appropriate.

In the Statement of Answer, Respondent requested that the Panel dismiss Claimant's Statement of Claim in its entirety with prejudice; expungement, on behalf of Unnamed Party David Walter Fenning ("Fenning"), of all references to this matter from Central Registration Depository ("CRD") registration records; and for 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 October 28, 2021, Claimant filed a notice of voluntary settlement and dismissal with prejudice. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

On November 9, 2021, Respondent filed a Motion for Expungement on behalf of Fenning to which no response was filed.

The Panel conducted a recorded, telephonic hearing on January 13, 2022, so the parties could present oral argument and evidence on Respondent's request for expungement on behalf of Fenning.

Neither Claimant nor Claimant's counsel participated in the expungement hearing. The Panel found that Claimant had notice of the expungement hearing.

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. Fenning's request for expungement of the above-captioned arbitration (Occurrence Number 2075121) from registration records maintained by the CRD is denied.
2. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, treble damages, and attorneys' fees, 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	=\$ 1,425.00
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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	=\$ 1,700.00
Member Process Fee	=\$ 3,250.00

Postponement Fees

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

October 27-29, 2021, postponement requested by the parties	=\$ 1,125.00
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Total Postponement Fees	=\$ 1,125.00

The Panel has assessed \$562.50 of the postponement fees to Claimant.

The Panel has assessed \$562.50 of the postponement 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:

Three (3) pre-hearing sessions with the Panel @ \$1,125.00/session	=\$ 3,375.00
Pre-Hearing Conferences: September 11, 2020 1 session	

April 14, 2021 1 session
September 21, 2021 1 session

One (1) hearing session on expungement request @ \$1,125.00/session	= \$	1,125.00
Hearing: January 13, 2022 1 session		
<hr/> Total Hearing Session Fees	= \$	4,500.00

The Panel has assessed \$1,687.50 of the hearing session fees to Claimant.

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

Robert J. Scafuri	-	Public Arbitrator, Presiding Chairperson
Michael D. McDowell	-	Public Arbitrator
Linda Arlene Michler	-	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

Robert J. Scafuri

Robert J. Scafuri
Public Arbitrator, Presiding Chairperson

01/22/2022

Signature Date

Michael D. McDowell

Michael D. McDowell
Public Arbitrator

01/21/2022

Signature Date

Linda Arlene Michler

Linda Arlene Michler
Public Arbitrator

01/21/2022

Signature Date

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January 24, 2022

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