

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimant  
Alila Hollander

Case Number: 20-01556

vs.

Respondent  
UBS Financial Services Inc.

Hearing Site: Chicago, Illinois

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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

**REPRESENTATION OF PARTIES**

For Claimant Alila Hollander (“Claimant”): Joseph Wojciechowski, Esq., Stoltmann Law Offices, P.C., Barrington, Illinois. \*

For Respondent UBS Financial Services Inc. (“Respondent”): Charlotte S. Wolfe, Esq., UBS Business Solutions US LLC, Nashville, Tennessee.

For Unnamed Party Barry Peter Mitchell, Jr. (“Mitchell”): David I. Hantman, Esq., Bressler Amery & Ross, P.C., 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: May 18, 2020.  
Claimant signed the Submission Agreement: May 15, 2020.

Statement of Answer filed by Respondent on or about: August 21, 2020.  
Respondent signed the Submission Agreement: May 18, 2020.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action: breach of fiduciary duty; violations of FINRA Rules 2010, 2120, 2111, and 3110; breach of contract; and vicarious

liability. The causes of action related to Claimant's allegations that Respondent, through its registered representative, sold Claimant's Chicago Board Options Exchange ("CBOE") position without disclosing tax implications.

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 of \$78,000.00; punitive damages as authorized by *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52 (1995) and the Arbitrator's Manual; attorneys' fees and costs of this action including all arbitration forum fees; and such other and further relief as the Arbitrator deems just and proper.

In the Statement of Answer, Respondent requested that the Statement of Claim be dismissed in its entirety and with prejudice; expungement of this matter, on behalf of Mitchell, of all references to this matter from Central Registration Depository ("CRD") registration records; and for such other and further relief as the Arbitrator deems just and proper.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

Mitchell, having appeared and testified at the hearing, is bound by the determination of the Arbitrator on all issues submitted.

On June 22, 2021, Claimant filed a notice of voluntary dismissal with prejudice. Therefore, the Arbitrator made no determination with respect to any of the relief requests contained in the Statement of Claim.

On July 14, 2021, Mitchell filed a Motion for Expungement, to which no response was filed.

The Arbitrator conducted a recorded, telephonic hearing on November 30, 2021, so the parties could present oral argument and evidence on Mitchell's request for expungement.

Neither Claimant nor Claimant's counsel participated in the expungement hearing.

Respondent did not participate in the expungement hearing.

The Arbitrator reviewed Mitchell's BrokerCheck® Report. The Arbitrator noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrence in the CRD.

The Arbitrator also reviewed the settlement documentation, considered the amount of payment made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on any party to the settlement not opposing the request for expungement and that Mitchell did not contribute to the settlement amount.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Mitchell's testimony and Mitchell's Exhibits.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and any post-hearing submissions, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. The Arbitrator recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2076913) from registration records maintained by the CRD for Unnamed Party Barry Peter Mitchell, Jr. (CRD Number 1807506) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Barry Peter Mitchell, Jr. 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 Arbitrator has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is false.

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

The Statement of Claim is grounded on the significant tax consequences from a sale of very low-cost CBOE securities in a discretionary account. Allegations that Respondent and Mitchell were at fault and liable for the tax consequences is found to be false under FINRA Rule 2080 and therefore entitled to expungement. Mitchell's sworn testimony and the submitted documents show that the tax consequences were the result of the very low basis in the securities, Claimant was repeatedly made aware of the tax basis information, Claimant realized a tax consequence of a much smaller sale the year earlier without objection, Claimant wanted to liquidate an overly concentrated high risk position in CBOE securities, Claimant appeared to acquiesce in the reinvestment, and Claimant was repeatedly informed that Respondent and Mitchell do not provide tax advice.

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, the following fees are assessed:

#### **Filing Fees**

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

Initial Claim Filing Fee = \$ 975.00

*\*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 = \$ 1,100.00  
Member Process Fee = \$ 2,250.00

**Postponement Fees**

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

October 19, 2021, postponement requested by Mitchell WAIVED

**Hearing Session Fees and Assessments**

The Arbitrator has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Arbitrator, including a pre-hearing conference with the Arbitrator, which lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) pre-hearing sessions @ \$450.00/session		= \$ 900.00
Pre-Hearing Conferences: September 9, 2020	1 session	
July 19, 2021	1 session	
One (1) hearing session on expungement request @ \$450.00/session		= \$ 450.00
Hearing: November 30, 2021	1 session	
<b>Total Hearing Session Fees</b>		<b>= \$ 1,350.00</b>

The Arbitrator has assessed \$225.00 of the hearing session fees to Claimant.

The Arbitrator has assessed \$1,125.00 of the hearing session fees to Respondent.

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

**ARBITRATOR**

Raymond P. Buschmann

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Sole 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.

**Arbitrator's Signature**

***Raymond P. Buschmann***

Raymond P. Buschmann  
Sole Public Arbitrator

**12/03/2021**

Signature Date

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December 03, 2021

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