

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Richard P. Kincheloe, V

Case Number: 20-02764

vs.

Respondent

UBS Financial Services Inc.

Hearing Site: Dallas, Texas

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

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Richard P. Kincheloe, V (“Claimant”): Samuel B. Edwards, Esq. and Ryan Cook, Esq., Shepherd, Smith, Edwards & Kantas, LLP, Houston, Texas.

For Respondent UBS Financial Services Inc. (“Respondent”): A.J. Borrelli, Esq. and Rebecca A. Borgese, Esq., Riker Danzig Scherer Hyland & Perretti LLP, Morristown, New Jersey, and Charlotte S. Wolfe, Esq., UBS Business Solutions US LLC, Nashville, Tennessee.

CASE INFORMATION

Statement of Claim filed on or about: August 25, 2020.

Claimant signed the Submission Agreement: July 17, 2020.

Statement of Answer filed on or about: November 12, 2020.

Respondent signed the Submission Agreement: August 25, 2020.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: breach of contract and warranties; promissory estoppel; violation of the Texas Deceptive Trade Practices – Consumer Protection Act; violation of the Texas Securities Act; statutory fraud; breach of fiduciary duty; negligence and gross negligence; misrepresentation/omission and negligent misrepresentation/omission; unjust enrichment; failure to supervise; common law and statutory claims; and vicarious and control person liability. The causes of action related to Claimant’s

allegation that his investments in a Yield Enhancement Strategy account were based on false representations.

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 an award ordering Respondent to pay an amount between \$50,000.00 and \$100,000.00, including all direct and/or consequential damages and statutory and/or punitive damages; plus interest and costs as provided by statute, as follows:

- A. All sums lost in Claimant's accounts on any or all transactions made or not made; plus, additionally or alternatively,
- B. All lost opportunities incurred as a result of acts and/or omissions, including the opportunity cost of Claimant being forced to liquidate investments to pay down margin debt; plus, additionally or alternatively,
- C. Consequential damages, including the tax consequences of Respondent's actions;
- D. Statutory damages as provided by applicable law; plus, additionally or alternatively,
- E. Punitive damages in an amount that the Arbitrator shall deem appropriate; plus,
- F. Pre-award and pre-judgment interest at the highest rate allowed by law; plus, additionally or alternatively,
- G. All costs of these proceedings, for recovery of damages, including legal fees while on appeal, if any, and for collection; plus, additionally or alternatively,
- H. Any and all other relief available to Claimant, in law or equity or otherwise, which may be granted by this Arbitrator.

In the Statement of Answer, Respondent requested dismissal of the Statement of Claim in its entirety and with prejudice; expungement of all references to this matter from the registration records of Unnamed Parties Cory Durham and Gerard Costello maintained by the Central Registration Depository ("CRD"); and 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.

The Panel considered Respondents' request for expungement on behalf of Cory Durham and Gerard Costello as part of the recorded evidentiary hearing in this matter, which was conducted by videoconference.

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. Respondent is liable for and shall pay to Claimant the sum of \$50,000.00 in compensatory damages.

2. The request for expungement of the above-captioned arbitration for Unnamed Party Cory Alan Durham (Occurrence Number 2087196) from registration records maintained by the CRD is denied.
3. The request for expungement of the above-captioned arbitration for Unnamed Party Gerard Joseph Costello (Occurrence Number 2088125) from registration records maintained by the CRD is denied.
4. 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	=\$ 975.00
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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	=\$ 1,100.00
Member Process Fee	=\$ 2,250.00

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: December 1, 2020	1 session
September 8, 2021	1 session
Seven (7) hearing sessions @ \$450.00/session	=\$ 3,150.00
Hearings: October 4, 2021	2 sessions
October 5, 2021	2 sessions
October 6, 2021	2 sessions
October 7, 2021	1 session

Total Hearing Session Fees	=\$ 4,050.00
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The Arbitrator has assessed \$2,025.00 of the hearing session fees to Claimant.

The Arbitrator has assessed \$2,025.00 of the hearing session fees to Respondent.

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

ARBITRATOR

Robert J. Gregory

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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

Robert J. Gregory

Robert J. Gregory
Sole Public Arbitrator

10/14/2021

Signature Date

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October 14, 2021

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