

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

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In the Matter of the Arbitration Between:

Claimant  
Hajime Amaya

Case Number: 21-01278

vs.

Respondents  
Unionbanc Investment Services, LLC  
Asako Kanekiyo Thompson

Hearing Site: San Francisco, California

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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 and Associated Person

This case was decided by an all-public panel.

**REPRESENTATION OF PARTIES**

For Claimant Hajime Amaya (“Claimant”): Kirk G. Smith, Esq., Shepherd, Smith & Edwards, LLP, Houston, Texas.

For Respondent Unionbanc Investment Services, LLC (“UBIS”): Neal S. Robb, Esq. and Bryce Cullinane, Esq., Keesal, Young & Logan, Long Beach, California.

Respondent Asako Kanekiyo Thompson (“Thompson”) did not enter an appearance.

Hereinafter, UBIS and Thompson are collectively referred to as “Respondents”.

**CASE INFORMATION**

Statement of Claim filed on or about: May 17, 2021.  
Claimant signed the Submission Agreement: May 7, 2021.

Statement of Answer filed by UBIS on or about: August 5, 2021.  
UBIS signed the Submission Agreement: August 5, 2021.  
Thompson did not file a Statement of Answer or sign the Submission Agreement.

### **CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action: breach of contract and warranties; promissory estoppel; violation of state securities statutes; violation of consumer protection statutes; violations of common law; and vicarious liability. The causes of action relate to Claimant's investment in an off-shore Certificate of Deposit held at UBIS.

Unless specifically admitted in the Statement of Answer, UBIS denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

1. Damages in an amount between \$100,000.00 and \$500,000.00, plus interest and costs, including all direct and/or consequential damages and statutory and/or market adjusted damages and/or punitive damages; plus interest and costs as provided by statute, in an amount which Claimant reserves the right to amend at any time including during hearings held on these matters, as follows:
  - a. all sums lost in Claimant's account 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; plus, additionally or alternatively,
  - c. rescission of any or all transactions as sought; plus, additionally or alternatively,
  - d. statutory damages as provided by applicable law; plus, additionally or alternatively,
  - e. punitive damages in an amount that the Panel shall deem appropriate; plus,
  - f. pre-award and pre-judgment interest on all sums invested from the date deposited until the date of the award and/or judgment and until such sums are paid, all at the highest rate allowed by law; plus, additionally or alternatively,
  - g. all costs of these proceedings and for recovery of damages incurred, including legal fees, including 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 to Claimant by this Arbitration Panel.

In the Statement of Answer, Respondents requested:

1. A finding that Claimant is not entitled to recover damages against UBIS and dismissal of Claimant's claims in their entirety;
2. Assessment of costs, Panel's fees, and expenses to Claimant; and
3. Such other relief as the Panel deems just and equitable.

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

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

Thompson did not file a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and is bound by the determination of the Panel on all issues submitted.

On June 14, 2021, Claimant filed a notice of voluntary dismissal of the claims against Thompson. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim against Thompson.

On September 15, 2021, UBIS filed a Motion to Dismiss pursuant to Rule 12206 of the Code of Arbitration Procedure ("Code"). On October 15, 2021, Claimant filed a response opposing the Motion to Dismiss. On November 1, 2021, UBIS filed a reply in support of its motion. On December 3, 2021, the Panel heard oral arguments on the Motion to Dismiss. The Panel hereby grants the Motion to Dismiss for the reasons stated in the Findings section below.

UBIS's Motion to Dismiss pursuant to Rule 12206 of the Code is granted by the Panel without prejudice to any right Claimant has to file in court; Claimant is not prohibited from pursuing his claims in court pursuant to Rule 12206(b) of the Code.

The Award in this matter may be executed in counterpart copies.

### **FINDINGS**

FINRA Rule 12206 states, in part, the following:

"No claim shall be eligible for submission to arbitration under the Code where six years have elapsed from the occurrence or event giving rise to the claim. The panel will resolve any questions regarding the eligibility of a claim under this rule."

The Panel finds that the triggering event occurred in 2003, which is more than six years of elapsed time from the submission of the claim.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the December 3, 2021 recorded pre-hearing conference, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimant's claims are dismissed without prejudice, pursuant to Rule 12206 of Code.

### **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	= \$ 1,425.00
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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, UBIS is assessed the following:

Member Surcharge	= \$	2,025.00
Member Process Fee	= \$	3,875.00

**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:

Two (2) pre-hearing sessions with the Panel @ \$1,125.00/session	= \$	2,250.00
Pre-Hearing Conferences: September 13 2021	1 session	
December 3, 2021	1 session	

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Total Hearing Session Fees	= \$	2,250.00
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The Panel has assessed \$1,125.00 of the hearing session fees to Claimant.

The Panel has assessed \$1,125.00 of the hearing session fees to UBIS.

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

**ARBITRATION PANEL**

Herbert Liberman	-	Public Arbitrator, Presiding Chairperson
Herb Schwartz	-	Public Arbitrator
Peter H. Daly	-	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**

***Herbert Liberman***

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Herbert Liberman  
Public Arbitrator, Presiding Chairperson

**12/20/2021**

\_\_\_\_\_  
Signature Date

***Herb Schwartz***

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Herb Schwartz  
Public Arbitrator

**12/21/2021**

\_\_\_\_\_  
Signature Date

***Peter H. Daly***

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Peter H. Daly  
Public Arbitrator

**12/21/2021**

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Signature Date

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December 21, 2021

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