

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Daniel Ferber, as Trustee of the Harriet Ferber
2012 Family Trust

Case Number: 19-02550

vs.

Respondent

UBS Financial Services Inc.

Hearing Site: Houston, 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

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Daniel Ferber, as Trustee of the Harriet Ferber 2012 Family Trust (“Claimant”): Jacob H. Zamansky, Esq., Samuel Bonderoff, Esq., and Matthew Hendrickson, Esq., Zamansky, LLC, New York, New York.

For Respondent UBS Financial Services Inc. (“Respondent”): Patrick M. Smith, Esq., Katten Muchin Rosenman LLP, Los Angeles, California and Rebecca K. Lindahl, Esq., Katten Muchin Rosenman LLP, Charlotte, North Carolina.

CASE INFORMATION

Statement of Claim filed on or about: August 26, 2019.

Corrected Statement of Claim filed on or about: August 27, 2019.

Claimant signed the Submission Agreement: August 26, 2019.

Statement of Answer filed on or about: November 26, 2019.

Respondent signed the Submission Agreement: August 28, 2019.

CASE SUMMARY

In the Statement of Claim, as corrected, Claimant asserted the following causes of action: fraud; misrepresentation; unsuitability; breach of fiduciary duty; and breach of contract under the

federal securities laws, FINRA regulations, and state securities and common law. The causes of action related to Claimant's allegation that Respondent fraudulently marketed the Yield Enhancement Strategy, an options strategy, as low-risk and obfuscated the substantial risk of loss.

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, as corrected, Claimant requested: (i) rescission of all trading losses, mandates and disgorgement of all fees received by Respondent; (ii) compensatory damages of approximately \$400,000.00, including recovery of all trading losses and fees received by Respondent; (iii) recovery of pre- and post-award interest, costs, expenses, attorneys' fees, expert fees, and forum fees; and (iv) punitive damages in such amount as the Panel deems appropriate and just.

In the Statement of Answer, Respondent requested an award dismissing the Statement of Claim in its entirety and with prejudice, expunging all references to this matter from the registration records maintained by the Central Registration Depository ("CRD") of Unnamed Parties Mark Elias and Scott Rosenberg, and granting 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 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. Respondent is liable for and shall pay to Claimant the sum of \$357,831.22 in compensatory damages.
2. Respondent is liable for and shall pay to Claimant the sum of \$300.00 as reimbursement for the non-refundable portion of the filing fee previously paid to FINRA Dispute Resolution Services.
3. The request for expungement of the above-captioned arbitration (Occurrence Number 2046263) from registration records maintained by the CRD for Mark Steven Elias is denied.
4. The request for expungement of the above-captioned arbitration (Occurrence Number 2047286) from registration records maintained by the CRD for Scott Michael Rosenberg is denied.

5. 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	= \$ 1,900.00
Member Process Fee	= \$ 3,750.00

Postponement Fees

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

August 16-20, 2021, postponement requested jointly by the parties	= \$ 1,125.00
<u>Total Postponement Fees</u>	<u>= \$ 1,125.00</u>

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:

One (1) pre-hearing session with a single Arbitrator @ \$450.00/session	= \$ 450.00
Pre-Hearing Conference: July 20, 2021 1 session	

One (1) pre-hearing session with the Panel @ \$1,125.00/session	= \$ 1,125.00
Pre-Hearing Conference: January 13, 2020 1 session	

Seven (7) hearing sessions @ \$1,125.00/session	= \$ 7,875.00
Hearings:	
August 23, 2021 2 sessions	
August 24, 2021 2 sessions	
August 25, 2021 2 sessions	
August 26, 2021 1 session	

Total Hearing Session Fees	= \$	9,450.00
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The Panel has assessed \$787.50 of the hearing session fees to Claimant.

The Panel has assessed \$8,662.50 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Samuel Olutola Akeju	-	Public Arbitrator, Presiding Chairperson
G. Dennis Sheehan	-	Public Arbitrator
William James Smith	-	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

Samuel Olutola Akeju

Samuel Olutola Akeju
Public Arbitrator, Presiding Chairperson

09/15/2021

Signature Date

G. Dennis Sheehan

G. Dennis Sheehan
Public Arbitrator

09/15/2021

Signature Date

William James Smith

William James Smith
Public Arbitrator

09/15/2021

Signature Date

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September 15, 2021

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