

**Award**  
**FINRA Office of Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimants

Jose E. Diaz-Martinez  
Iris N. Burgos-Rodriguez  
Jose A. Diaz-Burgos  
Nellie Aponte-Flecha

Case Number: 15-02316

vs.

Respondents

UBS Financial Services, Inc.  
UBS Financial Services Inc. of Puerto Rico

Hearing Site: San Juan, Puerto Rico

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Nature of the Dispute: Customers vs. Members

This case was decided by an all-public panel.

**REPRESENTATION OF PARTIES**

For Claimants Jose E. Diaz-Martinez, Iris N. Burgos-Rodriguez, Jose A. Diaz-Burgos and Nellie Aponte-Flecha: Jeffrey R. Sonn, Esq., Sonn & Erez, PLC, Miami, Florida and Eliezer Aldarondo, Esq., Aldarondo and Lopez Bras, PSC, Guaynabo, Puerto Rico.

For Respondents UBS Financial Services, Inc. ("UBS") and UBS Financial Services Inc. of Puerto Rico ("UBSPR"): Joshua Jones, Esq. and Joel M. Everest, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama and Guillermo J. Bobonis, Esq., Bobonis, Bobonis & Rodríguez Poventud, San Juan, Puerto Rico.

**CASE INFORMATION**

Statement of Claim filed on or about: September 4, 2015.

Jose E. Diaz-Martinez signed the Submission Agreement: September 2, 2015.

Iris N. Burgos-Rodriguez signed the Submission Agreement: September 2, 2015.

Jose A. Diaz-Burgos signed the Submission Agreement: September 2, 2015.

Nellie Aponte-Flecha signed the Submission Agreement: September 2, 2015.

Statement of Answer filed by Respondents on or about: December 16, 2015.

UBS Financial Services, Inc. signed the Submission Agreement: January 14, 2016.

UBS Financial Services Inc. of Puerto Rico signed the Submission Agreement: January 25, 2016.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary duty; negligence; negligent supervision; fraud; breach of contract; breach of contract-third party

beneficiary; violation of the Puerto Rico Uniform Securities Act; and violations of Section 10(b) of the Securities Exchange Act and Rule 10b-5 of the Securities and Exchange Commission. The causes of action relate to Claimants' investments in Puerto Rico closed-end funds invested predominantly in Puerto Rico debt.

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

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested: compensatory damages in excess of \$1,000,000.00; rescission; punitive damages; interest; costs; attorneys' fees; and such other and further relief deemed just and proper by the Panel.

In the Statement of Answer, Respondents requested: that Claimants take nothing by their claims and that their claims be dismissed in their entirety, with prejudice; assessment of all fees and costs against Claimants; a recommendation by the Panel of expungement of all references to this matter from the Central Registration Depository ("CRD") records of any financial advisors or other UBS personnel identified in the Statement of Claim or otherwise affected by the Statement of Claim; and such other and further relief deemed just and equitable by the Panel.

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

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

On or about September 18, 2017, Respondents filed a Motion in Limine to Exclude Evidence Relating to Claims of Alleged Fund Mismanagement in which they asserted that since these are derivative claims that are barred by Rule 12205 of the Code of Arbitration Procedure ("Code"), all evidence relating to such claims should be excluded. In their Response, Claimants stated, among other things, that their claims are not derivative and that FINRA has a longtime policy supporting a liberal introduction of evidence. In their Reply, Respondents reiterated their position that the claims are derivative and barred by Rule 12205 of the Code. On or about June 19, 2018, following a telephonic conference with the parties, the Panel issued an Order that denied the Motion.

On or about September 18, 2017, Respondents filed a Motion in Limine to Exclude Regulatory Settlements in which they asserted that: the regulatory settlements are inadmissible because they contain unadjudicated findings that Respondents did not admit; the regulatory settlements are not an indication of liability; admitting the regulatory settlements would undermine strong public policy in favor of settlement agreements; and any possible probative value is outweighed by clear prejudice. In their Response, Claimants asserted that: the SEC and FINRA findings of fact clearly relate to this case because they focus on the same fraud and other illicit conduct at issue; the Motion violates FINRA's longstanding policy supporting the liberal introduction of evidence; even if the federal rules of evidence did apply in this case, the SEC and FINRA findings and consent orders are unquestionably admissible; the Motion

relies on inapplicable, outdated and non-controlling case law that has no precedential value in this arbitration; and Respondents' reliance on an administrative law decision addressing a completely unrelated SEC action is misplaced. On or about June 19, 2018, following a telephonic conference with the parties, the Panel issued an Order that deferred ruling on Respondents' Motion until the evidentiary hearing. The Panel denied the Motion.

The parties present at the hearing have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **AWARD**

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

1. Respondents are jointly and severally liable for and shall pay to Claimants the sum of \$300,000.00 in compensatory damages.
2. Respondents' request for expungement of all references to this matter from the CRD records of any financial advisors or other UBS personnel identified in the Statement of Claim or otherwise affected by the Statement of Claim is denied.
3. Other than forum fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter.
4. Any and all claims for relief not specifically addressed herein, including Claimants' requests for punitive damages and attorneys' fees, are denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial Claim Filing Fee	= \$ 2,000.00
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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 parties, Respondents are assessed the following:

<u>UBS</u>	
Member Surcharge	= \$ 3,025.00
Member Process Fee	= \$ 6,175.00

<u>UBSPR</u>	
Member Surcharge	= \$ 3,025.00
Member Process Fee	= \$ 6,175.00

**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) that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) pre-hearing sessions with a single arbitrator @ \$450.00/session	= \$ 900.00
Pre-hearing conferences: June 21, 2018	1 session
July 11, 2018	1 session

Six (6) pre-hearing sessions with the Panel @ \$1,400.00/session	= \$ 8,400.00
Pre-hearing conferences: February 10, 2016	1 session
November 10, 2017	1 session
June 19, 2018	1 session
July 26, 2018	1 session
July 30, 2018	1 session
August 15, 2018	1 session

Twenty Three (23) hearing sessions @ \$1,400.00/session	= \$32,200.00
Hearing Dates: July 16, 2018	2 sessions
July 17, 2018	2 sessions
July 18, 2018	2 sessions
July 19, 2018	3 sessions
July 20, 2018	3 sessions
July 23, 2018	2 sessions
August 18, 2018	2 sessions
August 19, 2018	3 sessions
August 20, 2018	3 sessions
August 21, 2018	1 session

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Total Hearing Session Fees	= \$41,500.00
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The Panel has waived the \$1,400.00 fee in connection with the July 26, 2018, pre-hearing conference.

The Panel has assessed \$20,050.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$20,050.00 of the hearing session fees jointly and severally to Respondents.

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

**ARBITRATION PANEL**

David Edward Upton	-	Public Arbitrator, Presiding Chairperson
Debra Black Leo	-	Public Arbitrator
Ronald L. Goss	-	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**

David E. Upton  
David Edward Upton  
Public Arbitrator, Presiding Chairperson

8/28/2018  
Signature Date

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Debra Black Leo  
Public Arbitrator

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

\_\_\_\_\_  
Ronald L. Goss  
Public Arbitrator

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

August 29, 2018

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Date of Service (For FINRA Office of Dispute Resolution office use only)

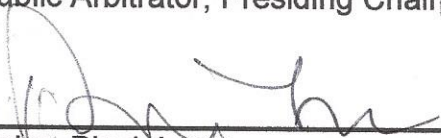
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Debra Black Leo  
Public Arbitrator

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

\_\_\_\_\_  
8/29/18  
Signature Date

\_\_\_\_\_  
Ronald L. Goss  
Public Arbitrator

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

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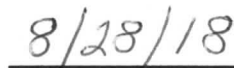
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