

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant
Jose F. Pastrana

Case Number: 15-03264

vs.

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

Hearing Site: San Juan, Puerto Rico

Nature of the Dispute: Customer vs. Members

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimant Jose F. Pastrana: Stefan Apotheker, Esq., Sonn & Erez, PLC, Miami, Florida, and Eliezer A. Aldarondo, Esq., Aldarondo & López Bras, P.S.C., Guaynabo, Puerto Rico.

For Respondents UBS Financial Services, Inc. ("UBS") and UBS Financial Services Inc. of Puerto Rico ("UBSPR"): Sean J. Coughlin, Esq., Bressler Amery & Ross, P.C., New York, New York, and Isabel Torres-Sastre, Esq. and Roberto C. Quiñones-Rivera, Esq., McConnell Valdes LLC, Hato Rey, Puerto Rico.

CASE INFORMATION

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

Jose F. Pastrana signed the Submission Agreement: December 4, 2015.

Statement of Answer filed by Respondents on or about: March 23, 2016.

UBS Financial Services, Inc. signed the Submission Agreement: February 29, 2016.

UBS Financial Services Inc. of Puerto Rico signed the Submission Agreement: December 29, 2015.

CASE SUMMARY

Claimant 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 violation of Sections 10(b) of the Securities Exchange Act and Rule 10b-5 of the Securities and Exchange Commission. The causes of action relate to Claimant's investments in Puerto Rico municipal bonds and closed-end bond funds.

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, Claimant requested: compensatory damages in the amount of between \$500,000.00 and \$1,000,000.00; punitive damages; rescission; 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 Claimant take nothing by his claims and that his claims be dismissed in their entirety, with prejudice; assessment of all FINRA fees and costs against Claimant; a recommendation 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 as 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 August 28, 2018, Respondents filed a Motion in Limine to Exclude Regulatory Settlements and Arbitration Awards from Prior and Unrelated Arbitrations in which they asserted that settlements made in connection with regulatory investigations are neither probative nor admissible, and the pleadings and awards from prior arbitrations are inadmissible. In his Opposition, Claimant asserted, among other things, that: FINRA's and the SEC's findings of fact, as well as other FINRA arbitration awards, clearly "relate to the case" because they focus on the same fraud and other illicit conduct at issue; FINRA has a longstanding policy of supporting the "liberal introduction of evidence" in arbitrations; prior judgments are unquestionably admissible under the Federal Rules of Evidence; Respondents' 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 sorely misplaced. At the outset of the evidentiary hearing, the Panel heard oral argument from the parties and denied the Motion.

The Panel has provided an explanation of their decision to award attorneys' fees in this Award. The explanation is for the information of the parties only and is not precedential in nature.

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, 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 Claimant the sum of \$435,623.33 in compensatory damages.
2. Respondents are jointly and severally liable for and shall pay to Claimant interest on the above-stated sum at the rate of 4.75% per annum from July 31, 2018, through satisfaction of this Award.
3. Respondent UBSPR is directed to repurchase from Claimant all non-cash assets in Claimant's account ending in 6445, except Nuveen Quality Municipal Income Fund and Puerto Rico AAA Portfolio Target Maturity Fund, Inc., at the market value as shown on the July 31, 2018, account statement.
4. Respondents are jointly and severally liable for and shall pay to Claimant the sum of \$26,936.49 in costs.
5. The parties submitted the issue of attorney fees to the Panel (First Interregional Equity Corp. v. Haughton, 842 F. Supp. 105 (S.D.N.Y. 1994)), and the Panel has the power to award fees deemed to be just and equitable and designed to place Claimant in the position he would have been but for the wrongful acts of the Respondents (Mastrobuono v. Shearson Lehman Hutton, Inc., 514 U.S. 52 (1995) and National Union Fire Ins. Co. of Pittsburgh, PA v. Odyssey Am. Reinsurance Corp., 2009 WL 4059183, at *6 (S.D.N.Y. Nov. 18, 2009)). Claimant has shown entitlement to attorneys' fees by submission of an affidavit. Accordingly, Respondents are jointly and severally liable for and shall pay to Claimant the sum of \$102,000.00 in attorneys' fees.
6. Respondents' request for expungement on behalf of "any financial advisors or other UBS personnel identified in the Statement of Claim or otherwise affected by the Statement of Claim" is denied.
7. Any and all claims for relief not specifically addressed herein, including Claimant's requests for punitive damages, are denied.

FEES

Pursuant to the Code of Arbitration Procedure, the following fees are assessed:

Filing Fees

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

Initial Claim Filing Fee	= \$ 1,725.00
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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:

UBS		
Member Surcharge		=\$ 2,475.00
Member Process Fee		=\$ 5,075.00
UBSPR		
Member Surcharge		=\$ 2,475.00
Member Process Fee		=\$ 5,075.00

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:

One (1) pre-hearing session with a single arbitrator @ \$450.00/session		=\$ 450.00
Pre-hearing conference: April 18, 2018	1 session	
Four (4) pre-hearing sessions with the Panel @ \$1,300.00/session		=\$ 5,200.00
Pre-hearing conferences: May 17, 2016	1 session	
	November 17, 2017	1 session
	June 11, 2018	1 session
	August 30, 2018	1 session
Sixteen (16) hearing sessions @ \$1,300.00/session		=\$20,800.00
Hearing Dates: September 5, 2018	2 sessions	
	September 6, 2018	2 sessions
	September 7, 2018	2 sessions
	September 12, 2018	2 sessions
	September 13, 2018	3 sessions
	September 14, 2018	2 sessions
	September 15, 2018	2 sessions
	September 16, 2018	1 sessions

Total Hearing Session Fees =\$26,450.00

The Panel has assessed \$5,290.00 of the hearing session fees to Claimant.

The Panel has assessed \$21,160.00 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

Myron E. Levenson	-	Public Arbitrator, Presiding Chairperson
Matthew Reid Krell	-	Public Arbitrator
Robert Eugene Doyle, Jr.	-	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

myron levenson

Myron E. Levenson
Public Arbitrator, Presiding Chairperson

10/29/2018
Signature Date

Matthew Reid Krell
Public Arbitrator

Signature Date

Robert Eugene Doyle, Jr.
Public Arbitrator

Signature Date

10/29/18

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

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Matthew Reid Krell	-	Public Arbitrator
Robert Eugene Doyle, Jr.	-	Public Arbitrator

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Myron E. Levenson
Public Arbitrator, Presiding Chairperson

Signature Date

Matthew Reid Krell

Matthew Reid Krell
Public Arbitrator

10/26/2018
Signature Date

Robert Eugene Doyle, Jr.
Public Arbitrator

Signature Date

10/29/18

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Public Arbitrator, Presiding Chairperson

Signature Date

Matthew Reid Krell
Public Arbitrator

Signature Date

/s/ Robert Eugene Doyle, Jr.
Robert Eugene Doyle, Jr.
Public Arbitrator

10/29/18

Signature Date

10/29/18

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