

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant
Daniel Paul Motherway

Master Case Number:
17-02799

vs.

Respondents
UBS Financial Services, Inc.
UBS Bank USA

Hearing Site: Newark, New Jersey

Consolidated with:

Claimant
UBS Financial Services, Inc.

Subordinate Case Number:
17-02773

vs.

Respondent
Daniel Paul Motherway

Hearing Site: Newark, New Jersey

Nature of the Dispute: Associated Person vs. Member and Non-Member
Member vs. Associated Person

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

Claimant Daniel Paul Motherway (“Motherway”) appeared pro se.

For Respondent UBS Financial Services Inc.(“UBS”): Anthony Borrelli, Esq. and Hunt Ricker, Esq., Riker Danzig Scherer Hyland Perretti, Morristown, New Jersey.

Respondent UBS Bank USA did not enter an appearance in this matter.

CASE INFORMATION

Case 17-02799

Statement of Claim filed on or about: October 18, 2017.

Daniel Paul Motherway signed the Submission Agreement: October 18, 2017.

Statement of Answer filed by Respondent UBS Financial Services, Inc. on or about: January 10, 2018.

UBS Financial Services Inc. signed the Submission Agreement: January 19, 2018.

UBS Bank USA did not submit a Statement of Answer or a Submission Agreement.

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Statement of Claim filed on or about: October 16, 2017.

Answer to Counterclaim filed on or about: January 30, 2018.

UBS Financial Services Inc. signed the Submission Agreement: October 8, 2017.

Statement of Answer and Counterclaim filed by Respondent Daniel Paul Motherway on or about: January 10, 2018.

Daniel Paul Motherway did not sign a Submission Agreement.

CASE SUMMARY

Case 17-02799

Motherway asserted the following causes of action: violation of the Fair Credit Reporting Act; violation of the Gramm-Leach-Bliley Act; prima facie tort; intentional infliction of emotional distress; breach of contract; breach of implied covenant of good faith and fair dealing; negligence; invasion of privacy; public disclosure of private facts; interference with business relations; defamation; and expungement of the Reason for Termination on Claimant's Form U5.

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

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UBS asserted the following cause of action: breach of promissory note.

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

In the Counterclaim, Motherway asserted the following causes of action: violation of the Fair Credit Reporting Act; violation of the Gramm-Leach-Bliley Act; prima facie tort; intentional infliction of emotional distress; breach of contract; breach of implied covenant of good faith and fair dealing; negligence; invasion of privacy; public disclosure of private facts; interference with business relations; defamation; and expungement of the Reason for Termination on Claimant's Form U5.

Unless specifically admitted in the Answer to Counterclaim, UBS denied the allegations made in the Counterclaim and asserted various affirmative defenses.

RELIEF REQUESTED

Case 17-02799

In the Statement of Claim, Motherway requested compensatory damages in excess of \$12,000,000.00; punitive damages; costs; attorneys' fees; and expungement of the Reason for Termination on Claimant's Form U5.

In the Statement of Answer, UBS requested that Claimant's claims be denied in their entirety; attorneys' fees; costs; expenses; and such other and further relief as the Arbitrators deem just and equitable.

In his post-hearing brief, Motherway requested \$80,153.87 in legal expenses; \$77,765.87 in legal fees; and \$2,250.00 in expenses.

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In the Statement of Claim, UBS requested \$1,012,729.65 in compensatory damages; interest; costs and late fees; attorneys' fees; reimbursement of FINRA filing fees in the amount of \$6,425.00; and such other and further relief as the Arbitrators deem just and equitable.

In the Statement of Answer and Counterclaim, Motherway requested compensatory damages in excess of \$12,000,000.00; punitive damages; costs; attorneys' fees; and expungement of the Reason for Termination on Claimant's Form U5.

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 November 29, 2017, in Case 17-02773, Motherway filed a Motion to Consolidate FINRA Arbitration cases 17-02773 and 17-02799. On or about December 11, 2017, UBS filed an Opposition to Motherway's Motion to Consolidate. On or about December 20, 2017, Motherway filed a Reply in further support of his Motion to Consolidate. On or about December 21, 2017, UBS filed a Sur-Reply in further opposition of Motherway's Motion to Consolidate. On or about December 22, 2017, Motherway filed a Reply to UBS's Sur-Reply in further support of his Motion to Consolidate. By Order dated February 13, 2018, the Panel granted the Motion to Consolidate.

Respondent UBS Bank USA is not a member or associated person of FINRA and did not voluntarily submit to arbitration. Therefore, the Panel made no determination with respect to Claimant's claims against Respondent UBS Bank USA.

On or about September 7, 2018, UBS filed a Motion to Dismiss Motherway's claims. On or about October 22, 2018, Motherway filed an Opposition to UBS's Motion to Dismiss. On or about October 29, 2018, UBS filed a Reply in further support of their Motion to Dismiss.

On January 31, 2019, the Panel heard oral arguments on UBS's Motion to Dismiss. After due deliberation, in an Order dated January 31, 2019, the Panel denied UBS's Motion to Dismiss.

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 post hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Daniel Paul Motherway is liable for and shall pay to UBS Financial Services, Inc. the sum of \$1,012,729.65 in compensatory damages.
2. Daniel Paul Motherway is liable for and shall pay to UBS Financial Services, Inc. interest on the above-stated sum at the rate of 3% per annum from award date through and including payment.
3. Daniel Paul Motherway is liable for and shall pay to UBS Financial Services, Inc. the sum of \$1,019.17 in costs.
4. Daniel Paul Motherway is liable for and shall pay to UBS Financial Services, Inc. the sum of \$111,400.00 in attorneys' fees pursuant to the contract and promissory note.
5. Daniel Paul Motherway is liable for and shall pay to UBS Financial Services, Inc. the sum of \$20,254.59 in late fees.
6. The Panel recommends the expungement of the Termination Explanation in Section 3 of Claimant Daniel Paul Motherway's (CRD # 2680522) Form U5, filed on July 14, 2017 by UBS Financial Services Inc. and maintained by the Central Registration Depository ("CRD") based on the defamatory nature of the information. The Termination Explanation shall be changed to "termination for providing conflicting and misleading information in connection with the firm's inquiry into a non-securities related matter." The Reason for Termination shall be changed to "other."

The above recommendations are based on the defamatory nature of the information and shall apply to all subsequent disclosures concerning this event including, but not limited to the expungement of the "Yes" answer to question 14(J)(1) on the Form U4, filed on January 12, 2018 by National Securities Corporation and maintained by the CRD. The "Yes" answer should be changed to "No" and the accompanying Disclosure Reporting Page deleted in its entirety.

The Form U5 is not automatically amended to include the changes indicated above. Claimant Daniel Paul Motherway must forward a copy of this Award to FINRA's Registration and Disclosure Department for review.

7. Motherway's remaining requests for relief are denied in their entirety.
8. Any and all claims for relief not specifically addressed herein, including punitive damages, and attorneys' fees, if any, 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	=\$ 2,250.00
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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 that employed the associated person at the time of the event giving rise to the dispute. Accordingly, as a party, UBS Financial Services, Inc. is assessed the following:

Member Surcharge	=\$ 4,025.00
Member Process Fee	=\$ 7,000.00

Postponement Fees

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

November 7-15, 2018, postponement by Motherway	=\$ 1,500.00
May 20-23, 2019, postponement by UBS	=\$ 1,500.00

Total Postponement Fees	=\$ 3,000.00
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The Panel has assessed \$1,500.00 of the postponement fees to Motherway.
The Panel has assessed \$1,500.00 of the postponement fees to UBS Financial Services, Inc.

Discovery-Related Motion Fee

Fees apply for each decision rendered on a discovery-related motion.

One (1) decision on a discovery-related motion on the papers with one (1) arbitrator @ \$200.00/decision	=\$ 200.00
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Total Discovery-Related Motion Fees	=\$ 200.00
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The Panel has assessed \$100.00 of the discovery-related motion fees to Motherway.
The Panel has assessed \$100.00 of the discovery-related motion fees to UBS Financial Services, Inc.

Contested Motion for Issuance of Subpoena Fee

Fees apply for each decision on a contested motion for the issuance of a subpoena.

One (1) decision on a contested motion for the issuance of a subpoena
with one arbitrator @ \$250.00 = \$ 250.00

Total Contested Motion for Issuance of Subpoena Fee = \$ 250.00

The Panel has assessed \$125.00 of the contested motion for issuance of subpoenas fees to Motherway.

The Panel has assessed \$125.00 of the contested motion for issuance of subpoenas fees jointly and severally to UBS Financial Services, Inc.

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, including a pre-hearing conference with the arbitrator, 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: September 10, 2018 1 session
March 7, 2019 1 session

Three (3) pre-hearing sessions with the Panel @ \$1,500.00/session = \$ 4,500.00
Pre-hearing conferences: February 13, 2018 1 session
March 28, 2018 1 session
January 31, 2019 1 session

Six (6) hearing sessions @ \$1,500.00/session = \$ 9,000.00
Hearing Dates: November 18, 2019 2 sessions
November 19, 2019 2 sessions
November 20, 2019 2 sessions

Total Hearing Session Fees = \$ 14,400.00

The Panel has assessed \$6,450.00 of the hearing session fees to Motherway.

The Panel has assessed \$7,950.00 of the hearing session fees to UBS Financial Services, Inc.

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

ARBITRATION PANEL

Robert E. Anderson	-	Public Arbitrator, Presiding Chairperson
Stephen L. Lister	-	Public Arbitrator
Charles A. Crocco	-	Non-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

Robert E. Anderson

Robert E. Anderson
Public Arbitrator, Presiding Chairperson

01/02/2020

Signature Date

Stephen L. Lister

Stephen L. Lister
Public Arbitrator

01/03/2020

Signature Date

Charles A. Crocco

Charles A. Crocco
Non-Public Arbitrator

01/03/2020

Signature Date

January 7, 2020

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