Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Barbara M. Estay, as Trustee of the Barbara M. Estay Trust

vs.

Respondent
UBS Financial Services Inc.

Case Number: 20-01201
Hearing Site: Raleigh, North Carolina

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 Barbara M. Estay, as Trustee of the Barbara M. Estay Trust: Samuel B. Edwards, Esq. and Ryan Cook, Esq., Shepherd Smith Edwards & Kantas, Houston, Texas.


CASE INFORMATION

Statement of Claim filed on or about: April 14, 2020.
Barbara M. Estay, as Trustee of the Barbara M. Estay Trust signed the Submission Agreement: April 14, 2020.

Statement of Answer filed by Respondent on or about: July 20, 2020.
UBS Financial Services Inc. signed the Submission Agreement: July 20, 2020.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: fraud; misrepresentation; unsuitability; unsuitable product; breach of fiduciary duty; negligence and breach of contract under the federal securities laws, FINRA regulations, North Carolina securities statutes and applicable common law. The causes of action relate to Claimant’s
investment in an options strategy product from Respondent called the Yield Enhancement Strategy (“YES”).

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, Claimant requested: equitable relief of rescission of all trading losses, mandates and disgorgement of all margin interest and fees received by Respondent; compensatory damages of approximately $350,000.00, including recovery of all trading losses, margin interest and fees received by Respondent; recovery of pre- and post-award interest, costs, expenses, attorneys’ fees, expert fees and forum fees of this arbitration; and punitive damages in such amount as this Panel deemed appropriate and just.

In the Statement of Answer, Respondent requested: dismissal of Claimant’s Statement of Claim in its entirety with prejudice; expungement of this matter from the Central Registration Depository (“CRD”) records of Unnamed Parties Henry Jakobsze (“Jakobsze”), Gerard Costello (“Costello”), and any and all associated persons who may be affected by this claim; and such other and further relief as the Panel deemed just and proper.

At the close of the hearing, Claimant requested total damages in the amount of $724,774.00, as follows: compensatory damages for transactional losses in the amount of $301,704.00; compensatory damages for YES fees in the amount of $41,685.00; compensatory damages for loan interest in the amount of $4,489.00; compensatory damages for liquidation damages in the amount of $177,589.00; attorneys’ fees (on a 33 and 1/3 percent contingency basis) in the amount of $175,138.00; and other litigation expenses (arbitration filing fees, expert witness fees, etc.) in the amount of $24,169.00.

**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 $343,389.00 in compensatory damages.

2. Respondent is liable for and shall pay to Claimant the sum of $24,169.00 in costs.
3. Respondent is liable for and shall pay to Claimant the sum of $100,568.00 in attorneys’ fees pursuant to First Interregional Equity Corp. v. Haughton, 842 F. Supp. 105, 112 (S.D.N.Y. 1994).

4. Unnamed Party Jakobsze’s (CRD Number 2792685) request for expungement of the above-captioned arbitration (Occurrence Number 2075224) from registration records maintained by the CRD is denied.

5. Unnamed Party Costello’s (CRD Number 1551511) request for expungement of the above-captioned arbitration (Occurrence Number 2075079) from registration records maintained by the CRD is denied.

6. In Respondent’s Statement of Answer, Respondent requested expungement on behalf of “any and all associated persons who may be affected by this claim.” However, the request was not pursued further and thus the Panel deemed the request withdrawn.

7. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, are denied.

**FEES**

Pursuant to the Code of Arbitration Procedure (“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

*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

**Discovery-Related Motion Fees**
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

Claimant submitted one (1) discovery-related motion

Total Discovery-Related Motion Fees = $ 200.00

The Panel has assessed the total discovery-related motion 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:

<table>
<thead>
<tr>
<th>Description</th>
<th>Date</th>
<th>Session Count</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Two (2) pre-hearing sessions</td>
<td></td>
<td></td>
<td>$2,250.00</td>
</tr>
<tr>
<td>with the Panel</td>
<td></td>
<td>1 session</td>
<td></td>
</tr>
<tr>
<td>Pre-Hearing Conferences: August 11, 2020</td>
<td>1 session</td>
<td></td>
<td></td>
</tr>
<tr>
<td>April 1, 2022</td>
<td>1 session</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Eleven (11) hearing sessions</td>
<td></td>
<td></td>
<td>$12,375.00</td>
</tr>
<tr>
<td>@ $1,125.00/session</td>
<td></td>
<td>2 sessions</td>
<td></td>
</tr>
<tr>
<td>Hearings:</td>
<td></td>
<td>2 sessions</td>
<td></td>
</tr>
<tr>
<td>February 22, 2022</td>
<td>2 sessions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>August 15, 2022</td>
<td>2 sessions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>August 16, 2022</td>
<td>2 sessions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>August 17, 2022</td>
<td>3 sessions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>August 18, 2022</td>
<td>2 sessions</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total Hearing Session Fees</strong></td>
<td></td>
<td></td>
<td>$14,625.00</td>
</tr>
</tbody>
</table>

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

The Panel has assessed $13,500.00 of the hearing session fees to Respondent.

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

Roger C. Benson  
09/01/2022  
Signature Date

Alan E. Linden  
08/31/2022  
Signature Date

Lynda Joyce Howell  
08/31/2022  
Signature Date

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.