

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

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In the Matter of the Arbitration Between:

Claimants

Pedro F. Diez and Carmen F. Macias, individually and as beneficiaries of the Diez Macias 1 Trust, Pedro F. Diez Macias, individually and as beneficiary of the Pefedima Trust, and Vissepo & Diez Construction Corp.

Case Number: 16-02528

vs.

Respondents

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

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 Pedro F. Diez and Carmen F. Macias, individually and as beneficiaries of the Diez Macias 1 Trust, Pedro F. Diez Macias, individually and as beneficiary of the Pefedima Trust, and Vissepo & Diez Construction Corp.: Jeffrey Erez, Esq., Erez Law, Miami, Florida, Lloyd R. Schwed, Esq., Schwed Kahle & Kress, P.A., Palm Beach Gardens, Florida and Eliezer A. Aldarondo-Lopez, Esq., Aldarondo & Lopez Bras, PSC, Guaynabo, Puerto Rico.

For Respondents UBS Financial Services Incorporated of Puerto Rico ("UBSPR") and UBS Financial Services, Inc. ("UBS"): George C. Freeman, III, Esq., Barrasso Usdin Kupperman Freeman & Sarver, L.L.C., New Orleans, Louisiana, Sara Soto, Esq. and Rebecca Swenson, Esq., Bressler, Amery & Ross, P.C., Ft. Lauderdale, Florida, and Guillermo J. Bobonis, Esq., Bobonis, Bobonis & Rodriguez Poventud, San Juan, Puerto Rico.

**CASE INFORMATION**

Statement of Claim filed by Pedro F. Diez and his wife Carmen F. Macias, Pedro F. Diez Macias, Rosa J. Diez Macias, Maricarmen Diez Macias, Carmen F. Diez Macias, Vissepo & Diez Construction Corp., Fideicomiso Hermanos Diez Macias, Fideicomiso Diez Macias 1, Pefedima Trust and Pefedima Management (the "initial Claimants") on or about: August 26, 2016.

Carmen F. Diez Macias signed the Submission Agreement: August 23, 2016.

Rosa J. Diez Macias signed the Submission Agreement: August 24, 2016.

Pedro F. Diez signed the Submission Agreement: August 25, 2016.

Pedro F. Diez Macias signed the Submission Agreement: August 25, 2016.

Maricarmen Diez Macias signed the Submission Agreement: August 25, 2016.  
Fideicomiso Diez Macias 1 signed the Submission Agreement: August 25, 2016.  
Fideicomiso Hermanos Diez Macias signed the Submission Agreement: August 25, 2016.  
Carmen F. Macias signed the Submission Agreement: August 25, 2016.  
Pefedima Management signed the Submission Agreement: August 25, 2016.  
Pefedima Trust signed the Submission Agreement: August 25, 2016.  
Vissepo & Diez Construction Corp. signed the Submission Agreement: August 25, 2016.

Statement of Answer filed by Respondents on or about: January 6, 2007.  
UBS Financial Services, Inc. signed the Submission Agreement: November 11, 2016.  
UBS Financial Services Incorporated of Puerto Rico signed the Submission Agreement: November 14, 2016.

Amended Statement of Claim filed by Claimants Pedro F. Diez and Carmen F. Macias, individually and as beneficiaries of the Diez Macias 1 Trust, Pedro F. Diez Macias, individually and as beneficiary of the Pefedima Trust, and Vissepo & Diez Construction Corp. (the “remaining Claimants”) on or about: November 26, 2018.

### **CASE SUMMARY**

In the Statement of Claim, the initial Claimants asserted the following causes of action: breach of fiduciary duty; breach of a broker’s duty of reasonable care; breach of a broker’s duty to supervise and ensure compliance with firm and industry rules; negligent and intentional misrepresentation; fraud and deceit; breach of contract and the covenant of good faith and fair dealing; gross negligence and ordinary negligence; violations of state and federal securities laws; violations of FINRA rules of fair practice, including the “suitability” and “know your customer” rules and “margin maintenance” rules; and respondeat superior and control person liability. The causes of action relate to Claimants’ investments in Puerto Rico bonds and closed-end bond funds, as well as the use of margin loans to purchase securities.

In the Amended Statement of Claim, the remaining Claimants asserted the following causes of actions: breach of fiduciary duty; negligence; negligent supervision; fraud; breach of contract; breach of contract – third party beneficiary; and violation 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 bonds and closed-end bond funds, as well as the use of margin loans to purchase securities.

Unless specifically admitted in the 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, the initial Claimants requested: compensatory damages in excess of \$15,000,000.00, plus the growth and income that would have been generated on Claimants’ principal if the money had been properly invested; a full accounting of

Claimants' investment accounts and Respondents' handling of Claimants' money; disgorgement of all commissions, margin interest and any other compensation or fees received by Respondents in connection with Claimants' accounts; rescission of all unsuitable and improper transactions; pre- and post-judgment interest at the legal rate during the applicable period; costs and fees of this action, including FINRA fees and expert witness fees; reasonable attorneys' fees pursuant to federal and state securities laws and the broad equitable powers entrusted to FINRA arbitrators; punitive damages in the amount of at least \$30,000,000.00; and such other relief as deemed appropriate by the Panel.

In the Amended Statement of Claim, Claimants requested: compensatory damages in excess of \$5,000,000.00, 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: Claimants take nothing by their claims and that their claims be dismissed in their entirety, with prejudice; all FINRA fees are assessed against Claimants; and the Panel recommend expungement of this matter from the Central Registration Depository ("CRD") records of non-party financial advisors Federico Lopez, Sr. ("Lopez") and Angel Canabal ("Canabal") pursuant to FINRA Rule 12805 of the Code of Arbitration Procedure ("Code"), and make specific findings supporting the expungement recommendation pursuant to FINRA Rule 2080.

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

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

The initial Claimants in this matter were Pedro F. Diez and his wife Carmen F. Macias, Pedro F. Diez Macias, Rosa J. Diez Macias, Maricarmen Diez Macias, Carmen F. Diez Macias, Vissepo & Diez Construction Corp., Fideicomiso Hermanos Diez Macias, Fideicomiso Diez Macias 1, Pefedima Trust and Pefedima Management.

On or about November 9, 2018, Claimants Rosa J. Diez Macias, Maricarmen Diez Macias and Carmen F. Diez Macias filed a Notice of Dismissal Without Prejudice of all claims they asserted against Respondents, to which Respondents agreed. Therefore, the Panel made no determinations with respect to any of the relief requested by these Claimants in the Statement of Claim.

On or about November 13, 2018, Claimants filed a Motion to Amend the Statement of Claim for the purpose of clarifying that the proper and remaining Claimants in this matter are Pedro F. Diez and Carmen F. Macias, individually and as beneficiaries of the Diez Macias 1 Trust, Pedro F. Diez Macias, individually and as beneficiary of the Pefedima Trust, and Vissepo & Diez Construction Corp. Removed as unnecessary parties were Fideicomiso Hermanos Diez Macias and Pefedima Management because they were associated with the remaining Claimants and the claims they were asserting were brought by the remaining Claimants. In their November 20, 2018, Opposition to the Motion to Amend, Respondents asserted, among other things, that the Motion was untimely and disingenuous because it did not merely attempt to clarify parties but also asserted new claims requiring additional discovery. In their Reply, Claimants stated that

the Motion was timely and was based on the same nucleus of operative facts as the original Statement of Claim and did not require additional discovery by the parties. On or about November 26, 2018, following a telephonic conference with the parties, the Panel issued an Order that, among other things, granted Claimants' Motion.

On or about November 26, 2018, Respondents filed a Supplement to its Opposition to the Motion to Amend. Given that Respondents' submission was made after the entry of the Panel's November 26, 2018, Order, and after the parties had a full opportunity to address the Motion during the telephonic conference that was previously conducted, the Panel issued a Supplemental Order that struck Respondents' supplemental submission as moot.

At the conclusion of Claimants' case-in-chief, Respondents moved to dismiss on the basis of the Puerto Rico one-year statute of limitations. Claimants opposed the Motion, citing FINRA's six-year eligibility rule. The Panel denied Respondents' Motion.

If the Arbitrators have provided any explanation of their decision 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 Vissepo & Diaz Construction Corp. compensatory damages in the amount of \$415,609.00, plus interest at the rate of 6.25% per annum, accruing from the date of service of this Award until the date of payment of this Award.
2. Respondents are jointly and severally liable for and shall pay to Claimant Pedro F. Diez Macias, individually and as beneficiary of the Pefedima Trust compensatory damages in the amount of \$973,322.78, plus interest at the rate of 6.25% per annum, accruing from the date of service of this Award until the date of payment of this Award.
3. Respondents, jointly and severally, shall purchase the assets from the accounts ending in 0400 and 3414 for the sum of \$1,349,611.00 and pay said sum to Claimant Vissepo & Diaz Construction Corp., plus interest at the rate of 6.25% per annum, accruing from the date of service of this Award until the date of payment of this Award.
4. Respondents, jointly and severally, shall purchase the assets from the accounts ending in 6533, 6445, 5047, 0072, 5443, 2251 and 1579 for the sum of \$4,063,928.00 and pay said sum to Claimants Pedro F. Diez and Carmen F. Macias, individually and as beneficiaries of the Diez Macias 1 Trust, plus interest at the rate

of 6.25% per annum, accruing from the date of service of this Award until the date of payment of this Award.

5. Respondents, jointly and severally, shall purchase the assets from the accounts ending in 1572 and 6064 for the sum of \$635,909.00 and shall pay said sum to Pedro F. Diez Macias, individually and as beneficiary of the Pefedima Trust, plus interest at the rate of 6.25% per annum, accruing from the date of service of this Award until the date of payment of this Award.
6. Pursuant to ReliaStar Life Ins. Co. of N.Y. v. EMC Nat. Life Co., 564 F.3d 81 (2nd Cir. 2009), the Panel uses its equitable authority to grant attorneys' fees and costs to provide a quasi-rescissionary Award. To that end, Respondents are jointly and severally liable for and shall pay to Claimants Pedro F. Diez and Carmen F. Macias, individually and as beneficiaries of the Diez Macias 1 Trust, Pedro F. Diez Macias, individually and as beneficiary of the Pefedima Trust, and Vissepo & Diez Construction Corp. attorneys' fees in the sum of \$300,000.00 and costs in the sum of \$100,000.00, which have been calculated using Lodestar in order to place Claimants in a comparable position as if they had not engaged in a non-diversified portfolio.
7. Respondents are jointly and severally liable for and shall pay to Claimants Pedro F. Diez and Carmen F. Macias, individually and as beneficiaries of the Diez Macias 1 Trust, Pedro F. Diez Macias, individually and as beneficiary of the Pefedima Trust, and Vissepo & Diez Construction Corp. the sum of \$750.00 representing reimbursement of the non-refundable portion of the FINRA filing fee.
8. Respondents' request for expungement on behalf of non-parties Canabal and Lopez is denied.
9. Any and all claims for relief not specifically addressed herein, including Claimants' request for punitive damages, 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	= \$ 2,250.00
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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(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:

**Respondent UBS**

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

**Respondent UBSPR**

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:

December 17-19, 2018, postponement made by Respondents	= \$ 1,500.00
January 10-11, 2019, postponement made by Respondents	= \$ 1,500.00
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Total Postponement Fees	= \$ 3,000.00

The Panel has assessed the total \$3,000.00 of adjournment fees jointly and severally to Respondents.

**Last Minute Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within ten calendar days before the start of a scheduled hearing session:

December 17-19, 2018, postponement made by Respondents	= \$ 1,800.00
January 10-11, 2019, postponement made by Respondents	= \$ 1,800.00
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Total Last Minute Cancellation Fees	= \$ 3,600.00

The Panel has assessed the total \$3,600.00 of last minute cancellation fees jointly and severally to Respondents.

**Discovery-Related Motion Fee**

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

Two (2) decisions on discovery-related motions on the papers with one (1) arbitrator @ \$200.00/decision	= \$ 400.00
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Total Discovery-Related Motion Fees	= \$ 400.00

A Non-Party submitted one (1) discovery-related motion  
Respondents submitted one (1) discovery-related motion

The Panel has assessed the total \$400.00 in discovery-related motion fees jointly and severally to Respondents.



**ARBITRATION PANEL**

Mauricio Arcadier	-	Public Arbitrator, Presiding Chairperson
Roger C. Benson	-	Public Arbitrator
Robert Stewart Barney	-	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**



\_\_\_\_\_  
Mauricio Arcadier  
Public Arbitrator, Presiding Chairperson

5/17/19  
Signature Date



\_\_\_\_\_  
Roger C. Benson  
Public Arbitrator

05/17/2019

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

\_\_\_\_\_  
Robert Stewart Barney  
Public Arbitrator

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

May 20, 2019

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

**ARBITRATION PANEL**

Mauricio Arcadier	-	Public Arbitrator, Presiding Chairperson
Roger C. Benson	-	Public Arbitrator
Robert Stewart Barney	-	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.

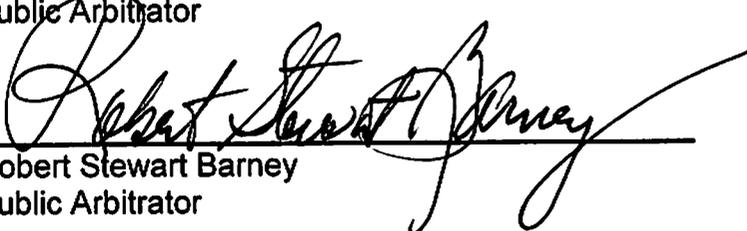
**Concurring Arbitrators' Signatures**

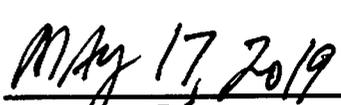
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Mauricio Arcadier  
Public Arbitrator, Presiding Chairperson

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Signature Date

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Roger C. Benson  
Public Arbitrator

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Signature Date

  
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Robert Stewart Barney  
Public Arbitrator

  
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Signature Date

May 20, 2019

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