

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Rick McCormick
Pamela McCormick
The Lindsay McCormick 2013 Gift Trust

Case Number: 20-03990

vs.

Respondent

UBS Financial Services Inc.

Hearing Site: Los Angeles, California

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: Customers vs. Member

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimants Rick McCormick, Pamela McCormick, and The Lindsay McCormick 2013 Gift Trust (collectively “Claimants”): Stefan Apotheker, Esq. and Jeffrey Erez, Esq., Erez Law, PLLC, Miami, Florida.

For Respondent UBS Financial Services Inc. (“Respondent”): Patrick M. Smith, Esq. and Zachary M. Schmitz, Esq., Katten Muchin Rosenman LLP, Los Angeles, California.

CASE INFORMATION

Statement of Claim filed on or about: December 7, 2020.

Claimants signed the Submission Agreement: December 7, 2020.

Statement of Answer filed by Respondent on or about: March 1, 2021.

Respondent signed the Submission Agreement: December 10, 2020.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: breach of fiduciary duty; negligence; negligent supervision; fraud; breach of contract; violation of Sections 10(b) of

the Securities Exchange Act and Rule 10b-5 of the Securities & Exchange Commission; and violation of the Texas Securities Act. The causes of action relate to a managed-account, 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, Claimants requested:

1. Damages between \$1,000,000.00 and \$5,000,000.00;
2. Interest;
3. Costs;
4. Attorneys’ fees; and
5. Such other and further relief as the Panel deems just and proper.

In the Statement of Answer, Respondent requested:

1. Dismissal of the Statement of Claim in its entirety and with prejudice; and
2. Such other and further relief as the Arbitrators deem just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

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

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 Claimants the sum of \$900,000.00 in compensatory damages, which includes \$450,000.00 to Rick McCormick and Pamela McCormick, and \$450,000.00 to The Lindsay McCormick 2013 Gift Trust.
2. Respondent is liable for and shall pay to Claimants the sum of \$56,717.66 in costs.
3. Respondent is liable for and shall pay to Claimants the sum of \$225,000.00 in attorneys’ fees pursuant to the arbitration agreement between the parties and ReliaStar Life Ins. Co. of NY v. EMC Nat. Life Co., 564 F.3d 81 at 86-87 (2nd Cir. 2009).
4. Respondent is liable for and shall pay to Claimants interest on the sum of the above-stated compensatory damages, costs, and attorneys’ fees at the rate of 5% per annum from 60 days after publication of this award through and including the date in which full payment is made to Claimants.
5. Any and all claims for relief not specifically addressed herein 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	=\$ 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 that employed the associated person at the time of the event giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge	=\$ 3,025.00
Member Process Fee	=\$ 6,175.00

Discovery-Related Motion Fees

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

Three (3) decisions on discovery-related motions on the papers with one (1) Arbitrator @ \$200.00/decision	=\$ 600.00
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Claimants submitted Two (2) discovery-related motions
Respondent submitted One (1) discovery-related motion

Total Discovery-Related Motion Fees	=\$ 600.00
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The Panel has assessed \$400.00 of the discovery-related motion fees jointly and severally to Claimants.

The Panel has assessed \$200.00 of the discovery-related motion fees to Respondent.

Contested Motion for Issuance of Subpoena Fees

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 @ \$200.00	=\$ 200.00
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Total Contested Motion for Issuance of Subpoena Fees	=\$ 200.00
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The Panel has assessed \$100.00 of the contested motion for issuance of subpoena fees jointly and severally to Claimants.

The Panel has assessed \$100.00 of the contested motion for issuance of subpoena 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:

One (1) pre-hearing session with a single Arbitrator @ \$450.00/session	= \$	450.00
Pre-Hearing Conference: March 21, 2022	1 session	
One (1) pre-hearing session with the Panel @ \$1,400.00/session	= \$	1,400.00
Pre-Hearing Conference: March 29, 2021	1 session	
Twenty-Three (23) hearing sessions @ \$1,400.00/session	= \$	32,200.00
Hearings:		
April 18, 2022	2 sessions	
April 19, 2022	2 sessions	
April 20, 2022	2 sessions	
April 21, 2022	2 sessions	
April 22, 2022	2 sessions	
April 25, 2022	2 sessions	
April 26, 2022	2 sessions	
April 27, 2022	2 sessions	
May 4, 2022	2 sessions	
May 5, 2022	2 sessions	
May 11, 2022	1 session	
May 18, 2022	2 sessions	

Total Hearing Session Fees = \$ 34,050.00

The Panel has assessed \$925.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$33,125.00 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Robert B. Hansohn	-	Public Arbitrator, Presiding Chairperson
Anita Teresa Hayden	-	Public Arbitrator
Betty Jean Jackson	-	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 B. Hansohn

Robert B. Hansohn
Public Arbitrator, Presiding Chairperson

06/02/2022

Signature Date

Anita Teresa Hayden

Anita Teresa Hayden
Public Arbitrator

06/05/2022

Signature Date

Betty Jean Jackson

Betty Jean Jackson
Public Arbitrator

06/03/2022

Signature Date

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June 06, 2022

Date of Service (For FINRA Dispute Resolution Services use only)