

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimants

Dennis Ainbinder and Nadine Ainbinder,  
as Trustees of the 1992 Ainbinder Family Trust

Case Number: 19-01723

vs.

Respondents

UBS Financial Services Inc.

Hearing Site: Boca Raton, Florida

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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 a majority-public panel.

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimants Dennis Ainbinder and Nadine Ainbinder, as Trustees of the 1992 Ainbinder Family Trust: Jeffrey Erez, Esq., Erez Law, PLLC, Miami, Florida.

For Respondent UBS Financial Services Inc.: Charles DeVore, Esq., Rebecca K. Lindahl, Esq. and Lari Dierks, Esq., Katten Muchin Rosenman LLP, Charlotte, North Carolina.

**CASE INFORMATION**

Statement of Claim filed on or about: June 18, 2019.

Dennis Ainbinder and Nadine Ainbinder signed the Submission Agreement as Trustees of the 1992 Ainbinder Family Trust: June 18, 2019.

Statement of Answer filed by Respondent on or about: August 23, 2019.

UBS Financial Services Inc. signed the Submission Agreement: June 19, 2019.

Amended Statement of Claim filed on or about: February 18, 2020.

Answer to Amended Statement of Claim filed by Respondent on or about: March 31, 2020.

### **CASE SUMMARY**

In the Statement of Claim, as amended, Claimants asserted the following causes of action: breach of fiduciary duty; negligence; negligent supervision; fraud; breach of contract; violation of section 10(b) of the Securities Exchange Act and Rule 10b-5 of the Securities and Exchange Commission; and violation of the Florida Securities and Investor Protection Act. The causes of action relate to Claimants' investments in an options strategy product from Respondent called the Yield Enhancement Strategy ("YES").

Unless specifically admitted in the Statement of Answer and in the Statement of Answer to the Amended Statement of Claim, Respondent denied the allegations made in the Statement of Claim, as amended, and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, as amended, Claimants requested: compensatory damages in an amount between \$1,000,000.00 and \$5,000,000.00; punitive damages; rescission; interest; costs; attorneys' fees; and such other and further relief this Panel deemed just and proper.

In the Statement of Answer to the Amended Statement of Claim, Respondent requested an award against Claimants dismissing the Statement of Claim in its entirety and with prejudice; a recommendation of expungement of this matter (CRD Occurrence Number 2038218) from the Central Registration Depository ("CRD") records of Unnamed Party Christopher Aitken (CRD Number 1470109); and a recommendation of expungement of this matter (CRD Occurrence Number 2037846) from the CRD record of Unnamed Party Roy Kenneth Topping (CRD Number 5494420).

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

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

Arbitrator Tina Polsky's classification changed from public to non-public during the case.

On January 28, 2020, Claimants filed an unopposed Motion to Amend the Statement of Claim after retaining new counsel, in which they sought to, among other things, add causes of action, amend the amounts of relief requested and amend information contained in the original Statement of Claim. On February 18, 2020, the Panel issued an Order in which it granted Claimants Motion to Amend.

Respondent did not address its request for expungement of Occurrence Number 2038218 from the CRD records of Unnamed Party Christopher Aitken (CRD Number 1470109), and Occurrence Number 2037846 from the CRD record of Unnamed Party Roy Kenneth Topping (CRD Number 5494420). Accordingly, the Panel deemed the request for expungement of both occurrences withdrawn.

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 breach of fiduciary duty, negligence, negligent supervision, and violation of the Florida Securities and Investor Protection Act and shall pay to Claimants the sum of \$147,192.00 in compensatory damages.
2. Respondent is liable for and shall pay to Claimants the sum of \$60,677.00 in costs.
3. Respondent is liable for and shall pay to Claimants the sum of \$44,158.00 in attorneys' fees pursuant to §517.211(6), Fla. Stat. Ann.
4. Respondent is liable and shall reimburse Claimants the sum of \$600.00, which represents the non-refundable portion of the filing fee previously paid to FINRA Dispute Resolution Services.
5. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages or treble 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	=\$ 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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Respondent UBS Financial Services, Inc. is assessed the following:

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

### **Late Pre-Hearing Cancellation Fees**

Fees apply when a pre-hearing conference is cancelled within three business days of the scheduled conference:

October 11, 2019, cancellation requested by Claimants	=\$ 300.00
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June 8, 2021, cancellation requested by Claimants = WAIVED

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Total Late Pre-Hearing Cancellation Fees = \$ 300.00

The Panel has assessed the total late pre-hearing cancellation fees of \$300.00 jointly and severally to Claimants.

**Postponement Fees**

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

July 20-23, 2020, Joint postponement request = \$ 1,400.00

August 1-3, 2022, Respondent's postponement request = \$ 1,400.00

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Total Postponement Fees = \$ 2,800.00

The Panel has assessed \$1,400.00 of the postponement fees jointly and severally to Claimants.

The Panel has assessed \$1,400.00 of the postponement 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:

Three (3) pre-hearing sessions with a single Arbitrator @ \$450.00/session = \$ 1,350.00

Pre-Hearing Conferences: April 26, 2021 1 session

August 9, 2021 1 session

August 10, 2021 1 session

Four (4) pre-hearing sessions with the Panel @ \$1,400.00/session = \$ 5,600.00

Pre-Hearing Conferences: October 18, 2019 1 session

February 25, 2020 1 session

August 3, 2021 1 session

May 2, 2022 1 session

Nineteen (19) hearing sessions @ \$1,400.00/session = \$ 26,600.00

Hearings: May 31, 2022 2 sessions

June 1, 2022 2 sessions

June 2, 2022 2 sessions

June 3, 2022 2 sessions

June 8, 2022 1 session

June 27, 2022 2 sessions

June 28, 2022 2 sessions

June 29, 2022 2 sessions

June 30, 2022 2 sessions

July 1, 2022 2 sessions

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Total Hearing Session Fees = \$ 33,550.00

The Panel has assessed \$3,475.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$30,075.00 of the hearing session fees to Respondent.

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

**ARBITRATION PANEL**

Donna Greenspan Solomon	-	Public Arbitrator, Presiding Chairperson
Jonathan Chane	-	Public Arbitrator
Tina Scott Polsky	-	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**

***Donna Greenspan Solomon***

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Donna Greenspan Solomon  
Public Arbitrator, Presiding Chairperson

**07/18/2022**

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Signature Date

***Jonathan Chane***

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Jonathan Chane  
Public Arbitrator

**07/18/2022**

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

***Tina Scott Polsky***

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Tina Scott Polsky  
Non-Public Arbitrator

**07/18/2022**

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

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July 18, 2022

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