

Award
FINRA Dispute Resolution

In the Matter of the Arbitration Between:

David Marcus Profit Sharing Plan, Marcus Kappel & Co. 401K, and Janet Marcus (Claimants) vs. UBS Financial Services, Inc. (Respondent)

Case Number: 08-04212

Hearing Site: New York, New York

Nature of the Dispute: Customers vs. Member

Public Arbitrator Pilot Program/All Public Panel

REPRESENTATION OF PARTIES

Claimants David Marcus Profit Sharing Plan ("Marcus Plan"), Marcus Kappel & Co. 401K ("Marcus Kappel"), and Janet Marcus ("J. Marcus"), hereinafter collectively referred to as "Claimants": Seth E. Lipner, Esq., Deutsch & Lipner, Garden City, NY.

Respondent UBS Financial Services, Inc., hereinafter referred to as "Respondent": Andrew Sidman, Esq. and Frank J. Cuccio, Esq., Bressler, Amery & Ross, New York, NY. Previously represented by Kenneth G. Crowley, Esq., UBS Financial Services Inc., Weehawken, NJ.

CASE INFORMATION

Statement of Claim filed on or about: November 12, 2008.
Marcus Plan signed the Uniform Submission Agreement: November 10, 2008.
Marcus Kappel signed the Uniform Submission Agreement: November 10, 2008.
J. Marcus signed the Uniform Submission Agreement: November 10, 2008.

Statement of Answer filed by Respondent on or about: January 23, 2009.
Respondent signed the Uniform Submission Agreement: January 23, 2009.

CASE SUMMARY

Claimants asserted the following causes of action: *respondeat superior*, breach of fiduciary duty, negligence, misrepresentations and omissions, fraud, breach of conduct, and unsuitable investments. The causes of action relate to the purchase of Lehman structured notes.

Unless specifically admitted in its 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 compensatory damages not to exceed \$500,000.00, punitive damages, interest from the time the claim accrued, reasonable attorneys' fees, and the costs of this proceeding.

At the close of the hearing, Claimants requested compensatory damages in the amount of \$432,000.00, interest, punitive damages, reasonable attorneys' fees, and the costs of this proceeding.

Respondent requested dismissal of the Statement of Claim in its entirety, costs incurred in defending against the Statement of Claim, and such other and further relief as may be just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

The Panel acknowledges that they have each read the pleadings and other materials filed by the parties.

This case proceeded under the Public Arbitrator Pilot Program, which allows parties to choose whether to have a non-public arbitrator on the Panel.

On or about October 26, 2009 Claimants submitted a Motion for Preclusion and Sanctions and, on or about October 29, 2009, Claimants submitted a Motion for Evidentiary and Monetary Sanctions. The Panel addressed these Motions and Respondent's oral Motion to Dismiss at the December 9, 2009 hearing. The Panel reviewed all submissions and considered all oral arguments. After due deliberation, the Panel denied the Motion for Preclusion and Respondent's Motion for Dismissal.

On or about February 4, 2010, Claimants submitted an additional Motion for Sanctions. The Panel considered all submissions and considered all oral arguments and, after due deliberation, denied the Motion.

The parties 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. Respondent is liable for and shall pay to Claimants compensatory damages in the amount of \$432,000.00.
2. Respondent is liable for and shall pay to Claimants attorneys' fees in the amount of \$53,000.00 pursuant to *Silverman v. Benmor Coats*, 61 N.Y. 2d 299, 473, NYS 2d 774 (1984).

3. Respondent is liable for and shall pay to Claimants \$5,610.00 as reimbursement for expert witness fees.
4. Claimants shall assign to Respondent that portion (if any) of Claimants' claim in Lehman Brothers bankruptcy proceedings up to \$432,000.00.
5. Any and all relief not specifically addressed herein, including punitive damages, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

FINRA Dispute Resolution 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 that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, as a party, UBS Financial Services, Inc., is assessed the following:

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: September 11, 2009 1 session	

One (1) Pre-hearing session with Panel @ \$1,125.00	= \$ 1,125.00
Pre-hearing conference: April 28, 2009 1 session	

Twenty two (22) Hearing sessions @ \$1,125.00	= \$24,750.00
Hearing Dates:	
November 2, 2009	1 session
November 3, 2009	1 session
December 2, 2009	2 sessions
December 3, 2009	2 sessions
December 9, 2009	2 sessions
December 10, 2009	2 sessions
January 13, 2010	2 sessions
January 14, 2010	2 sessions

February 17, 2010	2 sessions
February 18, 2010	2 sessions
February 19, 2010	2 sessions
March 8, 2010	2 sessions

Total Hearing Session Fees = \$26,325.00

- 1. The Panel has assessed \$13,162.50 of the hearing session fees jointly and severally to Claimants.**
- 2. The Panel has assessed \$13,162.50 of the hearing session fees to Respondent.**

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

ARBITRATION PANEL

Fred S. Pieroni - Public Arbitrator, Presiding Chairperson
Alvin Green - Public Arbitrator
Denise L. Quarles - Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Fred S. Pieroni
Fred S. Pieroni
Public Arbitrator, Presiding Chairperson

4/8/10
Signature Date

Alvin Green
Public Arbitrator

Signature Date

Denise L. Quarles
Public Arbitrator

Signature Date

April 9, 2010
Date of Service (For FINRA Dispute Resolution use only)

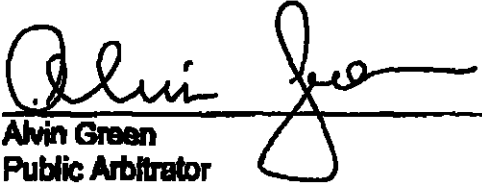
ARBITRATION PANEL

Fred S. Pieroni - Public Arbitrator, Presiding Chairperson
Alvin Green - Public Arbitrator
Denise L. Quarles - Public Arbitrator


I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Fred S. Pieroni
Public Arbitrator, Presiding Chairperson

Signature Date



Alvin Green
Public Arbitrator



Signature Date

Denise L. Quarles
Public Arbitrator

Signature Date

April 9, 2010
Date of Service (For FINRA Dispute Resolution use only)

ARBITRATION PANEL

Fred S. Pieroni - Public Arbitrator, Presiding Chairperson
Alvin Green - Public Arbitrator
Denise L. Quarles - Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Fred S. Pieroni
Public Arbitrator, Presiding Chairperson

Signature Date

Alvin Green
Public Arbitrator

Signature Date



Denise L. Quarles
Public Arbitrator



Signature Date

April 9, 2010
Date of Service (For FINRA Dispute Resolution use only)