

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

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In the Matter of the Arbitration Between:

Claimants

L.A. Marquez, Inc.  
Luis A. Marquez

Case Number: 13-03470

vs.

Respondents

Ramiro Luis Colon  
Enrique Fernandez  
Doel Rafael Garcia-Romero  
Carlos Verner Ubinas-Taylor  
UBS Financial Services Inc.  
UBS Financial Services Inc. of Puerto Rico

Hearing Site: San Juan, Puerto Rico  
and Miami, Florida

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Nature of the Dispute: Customers vs. Associated Persons and Members

This case was decided by an all-public panel.

**REPRESENTATION OF PARTIES**

For Claimant L.A. Marquez, Inc.: Harold D. Vicente Colon, Esq., Vicente & Cuebas, San Juan, Puerto Rico and Debra A. Jenks, Esq. and Robert J. Harvey, Esq., Jenks & Harvey, LLP, West Palm Beach, Florida.

For Claimant Luis A. Marquez: Francisco Pujol, Esq., Pujol Law Office, PSC, San Juan, Puerto Rico and Frank A. Dalmau Gomez, Esq., San Juan, Puerto Rico.

For Respondent Ramiro Luis Colon ("Colon"): Jaime E. Toro-Monserrate, Esq., Toro, Colon, Mullet & Sifre, PSC, San Juan, Puerto Rico.

For Respondent Enrique Fernandez ("Fernandez"): Sonia I. Torres, Esq., Melendez Torres Law PSC, San Juan, Puerto Rico.

For Respondents Doel Rafael Garcia-Romero ("Garcia") and Carlos Verner Ubinas-Taylor ("Ubinas"): Salvador J. Antonetti-Stutts, Esq. and Mauricio O. Muñiz-Luciano, Esq., O'Neill & Borges LLC, San Juan, Puerto Rico.

For Respondents UBS Financial Services Inc. ("UBS") and UBS Financial Services Inc. of Puerto Rico ("UBSPR"): Brian F. Amery, Esq., Inge Selden, Esq. and David Butler, Esq., Bressler, Amery & Ross, P.C., New York, New York.

### **CASE INFORMATION**

Statement of Claim filed on or about: November 22, 2013.

Luis A. Marquez signed the Submission Agreement: November 19, 2013.

L.A. Marquez, Inc. signed the Submission Agreement: November 19, 2013.

Statement of Answer filed by Respondents Fernandez, Colon, Ubinas, Garcia, UBS and UBSPR (collectively "Respondents") on or about: February 26, 2014.

UBS Financial Services Inc. signed the Submission Agreement: December 10, 2013.

UBS Financial Services Inc. of Puerto Rico signed the Submission Agreement: April 21, 2014.

Ramiro Luis Colon signed the Submission Agreement: February 26, 2014.

Enrique Fernandez signed the Submission Agreement: February 26, 2014.

Doel Rafael Garcia-Romero signed the Submission Agreement: March 24, 2014.

Carlos Verner Ubinas-Taylor signed the Submission Agreement: March 25, 2014.

Motion to Amend Answer to the Statement of Claim ("Motion to Amend") filed by Respondents on or about: April 30, 2014.

Claimants' Motion to Bar Defenses and Facts at the Hearings Pursuant to FINRA Rule 12308(b) ("Motion to Bar") filed on or about: August 11, 2014.

Respondents' Opposition to Claimants' Motion to Bar filed on or about: September 11, 2014.

### **CASE SUMMARY**

Claimants asserted the following causes of action: (1) violations of Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 of the Securities Exchange Act of 1934, NYSE and FINRA rules, and the securities laws and other laws and regulations of Puerto Rico; (2) securities fraud; (3) violation of Article 1802 of the Civil Code of Puerto Rico 31 Laws of Puerto Rico Annotated [L.P.R.A.] §5141; (4) breach of contract; and (5) breach of policies, laws, rules, regulations and norms for the financial protection of elderly or handicapped persons. The causes of action relate to, among other things, Claimants' investments in Puerto Rico closed-end mutual funds concentrated in Puerto Rico bonds.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested: losses of at least \$2,429,731.20, pre-judgment legal interest from the date of filing of the Statement of Claim; attorneys' fees; filing and consultant's fees and arbitration costs and expenses; any amounts needed to liquidate the debit or loan payable balances after reimbursement to Claimants of their net worth in their accounts as of July 31, 2013; punitive or extended damages of not less than \$1,500,000.00 for L.A. Marquez, Inc. and not less than \$800,000.00 for Luis A. Marquez; disgorgement of commissions, markups, markdowns and/or trading profits and/or interests and/or other fees; and reimbursement of all losses or, in the alternative,

rescission of all unauthorized transactions and other proper remedies, including, without limitation, a reasonable return on all assets deposited by Claimants.

At the close of the hearing, Claimants requested compensatory damages of \$1,525,000.00, reimbursement of expenses and forum costs, further unspecified damages and attorneys' fees.

In their Statement of Answer, Respondents requested dismissal of Claimants' claims contained in the Statement of Claim and expungement of this matter from the Central Registration Depository records of the individual Respondents.

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

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

In their Motion to Amend, Respondents requested leave to amend their Answer to add affirmative defenses and one additional exhibit. Claimants did not oppose the Motion and, on or about May 27, 2014, the Panel entered an Order which granted the Motion to Amend.

In their Motion to Bar, Claimants requested that the Panel bar Respondents from presenting at the hearing all of the defenses and facts known by Respondents and deliberately omitted by them from their Answer. In their Opposition to the Motion to Bar, Respondents asserted that FINRA rules do not support Claimants' Motion to Bar in this case because the Answer is detailed and provides Claimants with sufficient notice of the defenses that will be raised at the final hearing. On or about September 29, 2014, prior to the Panel considering the Motion, Claimants withdrew their Motion to Bar without prejudice.

On or about November 16, 2015, Claimants dismissed without prejudice their claims against Respondents Fernandez, Colon, Ubinas and Garcia. Respondents Fernandez, Colon, Ubinas and Garcia consented in writing to the dismissal without prejudice.

This case was venued in Puerto Rico where the first two weeks of hearing were held. The final week of hearing was held in Miami, Florida.

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 (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents UBS and UBSPR are jointly and severally liable for breach of contract and shall pay to Claimants compensatory damages in the sum of \$500,000.00, pre-judgment interest specifically denied.

2. Each party shall bear its own expenses.
3. Respondents did not raise during the evidentiary hearing their request for expungement contained in their Answer. Accordingly, the Panel deemed the request for expungement as withdrawn without prejudice.
4. Any and all relief not specifically addressed herein, including Claimants' requests for punitive damages and attorneys' fees, is denied.

### **FEES**

Pursuant to the Code of Arbitration Procedure, the following fees are assessed:

#### **Filing Fees**

FINRA Dispute Resolution assessed a filing fee\* for each claim:

Initial Claim Filing Fee = \$ 1,800.00

*\*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 parties, Respondents UBS and UBSPR are assessed the following:

Respondent UBS:

Member Surcharge	= \$ 2,800.00
Pre-Hearing Processing Fee	= \$ 750.00
Hearing Processing Fee	= \$ 5,000.00

Respondent UBSPR:

Member Surcharge	= \$ 2,800.00
Pre-Hearing Processing Fee	= \$ 750.00
Hearing Processing Fee	= \$ 5,000.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

August 3-7, 2015 and August 17-21, 2015, adjournment by Claimants = \$ 1,200.00

The Panel has assessed \$600.00 of the adjournment fee jointly and severally to Claimants.

The Panel has assessed \$600.00 of the adjournment fee jointly and severally to Respondents Fernandez, Colon, Ubinas, Garcia, UBS and UBSPR.

May 30-June 3, 2016, joint adjournment request = \$ 1,200.00

The Panel has assessed \$600.00 of the adjournment fee jointly and severally to Claimants.

The Panel has assessed \$600.00 of the adjournment fee jointly and severally to Respondents UBS and UBSPR.

**Contested Motion for Issuance of a 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 (1) arbitrator @ \$200.00 (maximum of \$600) = \$ 200.00

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Total Contested Motion for Issuance of Subpoenas Fees = \$ 200.00

The Panel has assessed \$100.00 of the contested motion for issuance of a subpoena fee jointly and severally to Claimants.

The Panel has assessed \$100.00 of the contested motion for issuance of a subpoena fee jointly and severally to Respondents UBS and UBSPR.

**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), that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00/session = \$ 900.00  
Pre-hearing conferences: October 30, 2014 1 session  
November 10, 2014 1 session

Four (4) Pre-hearing sessions with the Panel @ \$1,200.00/session = \$ 4,800.00  
Pre-hearing conferences: June 11, 2014 1 session  
February 6, 2015 1 session  
February 17, 2015 1 session  
March 10, 2015 1 session

Twenty-six (26) Hearing sessions @ \$1,200.00/session = \$31,200.00  
Hearing Dates: December 8, 2014 2 sessions  
December 9, 2014 2 sessions  
December 10, 2014 2 sessions  
December 11, 2014 2 sessions  
December 12, 2014 2 sessions  
November 30, 2015 2 sessions  
December 1, 2015 2 sessions  
December 2, 2015 2 sessions  
December 3, 2015 2 sessions  
December 4, 2015 2 sessions  
July 19, 2016 2 sessions  
July 20, 2016 2 sessions

July 21, 2016

2 sessions

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Total Hearing Session Fees	=\$36,900.00
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The Panel has assessed \$18,450.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$18,450.00 of the hearing session fees jointly and severally to Respondents UBS and UBSPR.

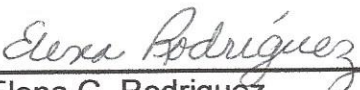
All balances are payable to FINRA Dispute Resolution and are due upon receipt.

**ARBITRATION PANEL**

Elena G. Rodriguez	-	Public Arbitrator, Presiding Chairperson
Gerald Silverman	-	Public Arbitrator
Christopher J. Klein	-	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**

  
\_\_\_\_\_  
Elena G. Rodriguez  
Public Arbitrator, Presiding Chairperson

  
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Signature Date

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Gerald Silverman  
Public Arbitrator

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

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Christopher J. Klein  
Public Arbitrator

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

August 1, 2016

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

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