

Quinn v UBS Fin. Servs. Inc.

2022 NY Slip Op 30490(U)

February 10, 2022

Supreme Court, New York County

Docket Number: Index No. 655556/2021

Judge: Laurence L. Love

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LAURENCE LOVE PART 63M

Justice

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WILLIAM QUINN,

Petitioner,

- v -

UBS FINANCIAL SERVICES INC., UBS CREDIT CORP.

Respondents.

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INDEX NO. 655556/2021

MOTION DATE 11/29/2022, 11/29/2022

MOTION SEQ. NO. 001 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER)

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23

were read on this motion to/for CONFIRM/DISAPPROVE AWARD/REPORT

Upon the foregoing documents,

The Verified Petition requests to vacate an arbitration award pursuant to CPLR 7511 and Section 10 of the Federal Arbitration Act; while a Cross – Petition seeks to confirm an arbitration award pursuant to Section 9 of the Federal Arbitration Act, and for costs and disbursements incurred.

Per the Cross – Petition, [William] Quinn was formerly employed as a financial advisor by UBSFS in its branch office in Philadelphia, Pennsylvania. During his employment with UBSFS, QUINN received three loans from UBS totaling \$1,115,657. Quinn executed a separate promissory note in connection with each of the three loans. Quinn voluntarily resigned from employment with UBSFS on June 30, 2016. Under the terms of each of the promissory notes, Quinn’s resignation from UBSFS caused the unpaid balances of the loans to become due and payable to UBS. Quinn failed to pay UBS the amounts that became due from him upon his

resignation from UBSFS. On October 13, 2016, UBS commenced a FINRA arbitration proceeding against Quinn, captioned *UBS Financial Services Inc. and UBS Credit Corp. v. William F. Quinn*, FINRA Case No. 16 – 03008. On or about August 31, 2021, the Panel issued the Award against Quinn and in favor of UBS in the amount of (a) \$269,812.27 for compensatory damages, (b) \$32,955.12 in accrued and unpaid interest as of the hearing date, (c) \$39.45 in costs, (d) \$63,869.05 in attorney’s fees, and (e) \$1,000 in FINRA fees. Quinn has failed to make any payment to UBS pursuant to the Award (see NYSCEF Doc. No. 8 Pars.6 – 10, 12, 14, 16). This amount totals \$367,675.89.

Respondents submit the FINRA Award dated on or about August 31, 2021 (see NYSCEF Doc. No. 23) and all relevant documents.

CPLR 7511(b)(1) states the “[g]rounds for vacating. The award shall be vacated on the application of a party who either participated in the arbitration or was served with a notice of intention to arbitrate if ... (i) corruption, fraud, or misconduct ... (ii) partiality of an arbitrator ... (iii) an arbitrator ... exceeded his power or so imperfectly executed it ... (iv) failure to follow the procedure of this article.”

The Verified Petition states in pertinent part, “[t]he arbitration panel was fully aware of Mr. Quinn’s lack of counsel, yet deliberately ignored his desperate pleas to postpone the hearing until he was able to retain counsel. Mr. Quinn, not being afforded his right to counsel which is an error amounting to procedural ‘misconduct’ under CPLR 7511(b)” (see NYSCEF Doc. No. 1 P. 6 - 7).

Respondents’ memorandum in opposition and support of cross – motion states, “[o]n August 10, 2021, UBS filed its Response in Opposition to Quinn’s Motion to Adjourn. UBS’ Opposition was on the grounds that, among other things, Quinn’s Motion to Adjourn failed to

establish good cause for his requested adjournment as required by FINRA Rule 13601(a)(2), which states that “[t]he panel *may not* grant a motion to postpone a hearing made within 10 days of the date that the hearing is scheduled to begin, unless the panel determines that good cause exists. Importantly, Quinn’s motion to adjourn was filed within 5 days of the scheduled first hearing date of August 24, 2021. UBS also opposed Quinn’s last – minute adjournment request on the basis that it would unduly prejudice UBS as it would have to – for the third time – reschedule hearing dates, coordinate rescheduling with its multiple potential witnesses, and prepare again for the final hearing in this matter. UBS further noted that the matter had been pending for nearly five years, with the hearing initially scheduled for March 2018 (see NYSCEF Doc. No. 9 P. 10 – 11).

Per the relevant caselaw, “arbitrator did not abuse his discretion in denying any further adjournment in the absence of good cause shown” (see *Ottley v. Mostoff*, 435 N.Y.S.2d 279 [1981]). “A reviewing court must confirm an arbitration award unless one of the several narrow grounds for vacatur or modification exists” (see *Nat’l Union Fire Ins. Co. of Pittsburgh, PA v. Source One Staffing, LLC*, No. 16-cv-6461, 2017 WL 2198160 at *1 (S.D.N.Y. May 17, 2017)).

As Petitioner does not show any grounds for vacating the arbitration award per the CPLR, the Federal Arbitration Act, or any relevant case law, it is:

ADJUDGED that the petition to vacate the arbitration award is DENIED; and the award rendered in favor of Respondents – UBS Financial Services Inc. and UBS Credit Corp and against Petitioner – William F. Quinn is CONFIRMED; and it is further

ADJUDGED that Respondents – UBS Financial Services Inc. and UBS Credit Corp., do recover from Petitioner – William F. Quinn, the amount of \$367,675.89, plus interest at the rate of 9% per annum from the date of August 31, 2021, as computed by the Clerk; and it is further

ORDERED that an assessment of Attorney’s Fees and Costs against Petitioner – William F. Quinn is directed, and it is further

ORDERED that a copy of this order with notice of entry be served by the Respondents – UBS Financial Services Inc. and UBS Credit Corp upon the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who is directed, upon the filing of a note of issue and a certificate of readiness and the payment of proper fees, if any, to place this action on the appropriate trial calendar for the assessment hereinabove directed; and it is further

ORDERED that such service upon the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh).

2/10/2022
DATE


LAURENCE LOVE, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input checked="" type="checkbox"/>	GRANTED IN PART		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER		
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE