UBS Arbitration Decision Might Hearken Sea Change For Advisors

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A **Finra** arbitration panel has denied a claim filed by UBS Financial Services against one of its former representatives who had gone over to Wells Fargo Advisors, AdvisorHub writes.

UBS sought to collect on a $1.18 million promissory note issued as a forgivable loan to **Benjamin Marcano**, who left UBS in March 2015 after four and a half years there, according to the industry news website, which cites the award posted on the self-regulator's website. The panel denied UBS's claim but it also denied Marcano's counterclaim for unspecified damages, AdvisorHub writes. UBS made the promissory note invalid because it breached its own policies, **Jarrod Malone** of **Shumaker, Loop & Kendrick**, Marcano's lawyer, tells the website. According to Malone, UBS allowed a broker at another complex with the firm to poach Marcano's main client, whose account made up around half of Marcano's book of business and who regularly referred prospects to him, AdvisorHub writes. Because UBS and its branch officials failed to do anything about it, Marcano's only choice was to quit, Malone claims, according to the website.

The panel's decision is "unusual," according to the website: Lawyers tell AdvisorHub that notes tied to signing or retention bonuses must be paid back if an advisor leaves the firm. Yet none of the three arbitrators, one of whom dissented the decision, explained their reasoning, according to the website. But Malone tells AdvisorHub that Marcano's case could be a sign of the tides changing in how Finra panels treat promissory notes.

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"There is a growing sense among arbitrators that firms must take into account the equitable circumstances of an FA's departure," the lawyer said in a prepared statement cited by the website. "No longer will a note be enforced simply because it's a note."

A UBS spokesman didn't respond to AdvisorHub's request for comment and neither did Marcano.

By Alex Padalka

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