

Fired UBS Employee Looks to Mount Class Action for Age Discrimination

By [Miriam Rozen](#) April 20, 2018

In a pending federal proposed class action age-discrimination lawsuit, **Alexander Beigelman**, a former [UBS](#) managing director, alleges he and other terminated UBS employees faced an unfair take it or leave it choice unreasonably foisted on them by the wirehouse when it laid them off.

Beigelman had to relinquish his rights to sue the wirehouse or forfeit \$500,000 in deferred compensation, he alleges. That was on top of having already unfairly been forced to forfeit an additional \$468,000 for his prior year's bonus, since he was laid off only days before UBS was scheduled to distribute that money, according to his lawsuit.

As it happened, Beigelman refused to give up his rights and instead opted to fight UBS to get the bonus, deferred compensation, and, at the same time, preserve his right to sue the wirehouse for age discrimination, according his lawyer, **Linda Friedman** of **Stowell & Friedman**. Friedman is no newcomer when it comes to suing wirehouses and has won more than \$300 million in class action settlements from them for former employees.

"He just thought this was wrong," Friedman says about Beigelman.

For its part, UBS filed this month an appeal of a federal judge's ruling that lets Beigelman pursue his claims. In its motions to dismiss Beigelman's lawsuit, UBS has labeled it "meritless." A UBS spokesman declines to comment on the pending litigation. **Eugene Scalia**, a law partner in the Washington, D.C. office of **Gibson, Dunn & Crutcher**, and the son of the late Supreme Court Justice **Antonin Scalia**, who is defending UBS against Beigelman's claims, did not return a call for this story.

In its motions, however, UBS stresses Beigelman and other terminated employees agreed to waive class action claims with a mandatory arbitration agreement that they signed as part of their initial job offer letters or terms of employment. UBS also argues those arbitration agreements contractually bind Beigelman and other former employees to arbitrate disputes before a panel governed by **Finra**. As with most broker-dealer employers, UBS's mandatory arbitration agreements with employees require any disputes that arise go before a Finra-supervised arbitration panel. Notably, Finra rules explicitly carve out an exception for class-action claims and do not permit those to be arbitrated at a Finra hearing.

When he began in 2007 at [UBS Wealth Management](#) in the firm's New York and New Jersey offices, Beigelman was head of technical architecture. By the time the wirehouse terminated him in January 2015, UBS had promoted Beigelman to managing director level. He was responsible for implementing a \$30 million-budgeted stability program for software and IT that, he alleges, helped reverse trends that had threatened to trigger a mass exodus of financial advisors from UBS. Beigelman expected to receive \$468,000 for his 2014-earned bonus alone.

But Beigelman didn't get his bonus, nor did he get three years' worth of vested, deferred compensation -- an additional \$500,000-plus -- he alleges in his lawsuit, filed on behalf of himself and a proposed class of former UBS employees. UBS also denied terminated employees their deferred compensation if they, as Beigelman had done, refused to sign an agreement releasing the company of all liabilities, according to his lawsuit.

UBS gave Beigelman and others it was terminating "a Hobson's choice" — a take it or leave it offer, the lawsuit states. UBS terminated Beigelman and others days before the wirehouse had been scheduled to issue bonuses for their previous year's work, he alleges. UBS also told Beigelman and others they had to sign a release for all discrimination claims against UBS, or to prepare to forfeit all earned incentive compensation, deferred compensation, and severance pay, he alleges.

In its motions, UBS argues that because Beigelman has also made all his claims against UBS — with the exception of his proposed class age discrimination claim — before a Finra panel, he has lost any rights to also pursue them in a federal court.

On March 7, a Finra panel agreed to UBS's request to dismiss Beigelman's claim for his bonus. But the Finra panel would not let UBS dismiss Beigelman's claim for his deferred compensation and severance, and it would not let UBS claw back, as the wirehouse has attempted, \$10,000 it had previously distributed to Beigelman.

According to UBS's motions to dismiss Beigelman's federal court case, he has not made an argument worthy of overriding the congressional policy under the Federal Arbitration Act that favors arbitration prevailing when it's agreed upon.

In contrast, Beigelman argues he should be allowed to go forward with a class action complaint because Finra rules specifically carve out an exception for class actions and its panels will not hear such complaints. He also argues that in other cases courts determined that a provision of the National Labor Relations Act, which allows workers the right to engage in collective actions for "mutual aid or protection," bars employers from interfering with employees exercising this right. Therefore, he argues the class action waiver that UBS had added to its mandatory arbitration agreements with its employees, including Beigelman, is not enforceable.

In its motions, UBS has countered — so far, unsuccessfully — that the judge should wait for the **U.S. Supreme Court** to issue a ruling in a case pending before it. In that case, the court is considering if the NLRA trumps the FAA. If the high court determines NLRA doesn't trump FAA, UBS and other employers nationwide who negotiate individual arbitration agreements with NLRA-covered, or nonsupervisory employees, could eliminate the risk of class actions by that category of workers with class-action waivers in mandatory arbitration agreements. If the high court determines the NLRA does trump the FAA, Beigelman will still have to override UBS's contention that he was a supervisory employee and therefore not covered by the NLRA.

U.S. District Judge **Matthew Kennelly** of the **Northern District of Illinois**, who is presiding in the UBS litigation, sided largely with Beigelman when he issued on March 19 a memorandum and order denying the wirehouse's request to dismiss its former managing director's complaint.

In his order, Kennelly concludes that UBS's class action waivers in its arbitration agreements are not valid at this stage.

“The threshold problem with UBS's argument, however, is that the parties' agreement incorporates Finra's rules, which include the prohibition on arbitration of class and collective actions,” Kennelly writes. In the same order, though, Kennelly noted that Beigelman had not shown that his arbitration agreement was unenforceable based on UBS fraudulently inducing him to sign it.

For his part, Beigelman has filed a post-hearing brief with the Finra panel seeking to recoup his bonus.

Friedman, Beigelman's lawyer, expresses confidence that her client should prevail. She has represented hundreds of wirehouse employees who have filed class actions against their employers and alleged discrimination. In the 1990s, she was one of the lawyers representing women plaintiffs who filed sexual harassment claims against then-**Smith Barney**, since acquired by [Merrill Lynch](#), and won \$150 million in arbitrations and settlements. The lawsuit was infamously named the “boom-boom room lawsuit” taking its moniker from a basement party room at Smith Barney's branch office in Garden City, N.Y. In 2013, Friedman represented a class of African-American employees who filed race discrimination claims against their employer Merrill Lynch and secured an \$160 million settlement.

Her experience litigating against other wirehouses convinces Friedman that UBS has unfavorably distinguished itself among its industry peers with its layoff practices. “What they did is not the industry practice and custom,” Friedman says. “I'm not aware of any other firm that routinely lays people off at the completion of the year before they get their bonuses,” she says.

UBS also separates itself from its wirehouse peers — in a bad way — by linking terminated employees' deferred compensation to its own get-out-of-jail card, so to speak, she says.

“I'm not aware of any other firm that requires to sign a release of liabilities to get that deferred compensation,” Friedman says. The class action waivers that are in UBS's mandatory arbitration agreements attempt to establish Teflon-like protection allowing the wirehouse's managers to discriminate without consequence, she says. If those class-action waivers are deemed enforceable, a UBS manager arguably could bluntly tell employees they were being terminated because they were black, and the employees would have no legal recourse unless they were ready to forsake their earned deferred compensation.

“If a company's manager walks around insulated from any litigation because it bars employees from filing claims and bars class actions, it changes behavior,” Friedman says -- and she doesn't mean for the better. “We thought it was a heavy-handed policy that had a negative impact on people in protected classes — women, African-Americans and more senior workers,” Friedman says about the UBS approach.

Friedman expresses no faith in getting a Finra panel to resolve these issues fairly. Outcomes from Finra panels rarely rank as fair to employees or former employees challenging wirehouses, she argues.

“It’s a game that they control,” she says about the wirehouses and Finra panels. “They control the rules -- it’s not a place for creating a civil rights record,” she says.



(Getty)

In Beigelman’s lawsuit, Friedman refers to UBS’s policies as “a bait-and-switch scheme to deprive its employees of their earned compensation and avoid liability for discrimination.”

To portray UBS as scheming, Friedman describes in Beigelman’s complaint changes UBS made to its compensation agreements on February 28, 2013. Specifically, UBS altered its definition of “redundant” employees who merited their deferred compensation to include only those who lost their jobs during a RIF and also signed a release of all claims. UBS made this change, which set up the “Hobson’s choice” Beigelman confronted, without telling employees, simply by inserting it into the appendix of a document separated from compensation agreements entitled “Common Terms,” according to Beigelman’s lawsuit.

Merrill Lynch and [Wells Fargo](#) do not have such language in their compensation agreements, nor do they include class action waivers in their employees’ mandatory arbitration agreements, according to Friedman.

“UBS lags behind the country in terms of its hiring and employment of diverse employees. Rather than comply with the civil rights laws and integrate its workforce, UBS blocks discrimination lawsuits by imposing mandatory arbitration agreements and class action waivers on its employees,” Beigelman’s complaint states.

An outside observer, **Sandra Sucher** minces few words about UBS’s alleged approach for terminating employees. “It’s a pretty unethical practice,” says Sucher, who is a professor at **Harvard Business School**, who frequently writes about corporate layoff policies and has an upcoming article on the topic in the May/June issue of the Harvard Business Review. “They really do have these employees over a barrel financially. It is fundamentally unfair to not allow people to be compensated for their prior work. It sort of says, ‘Just kidding’ about paying people fairly,” Sucher says.