

1   **IN THE UNITED STATES DISTRICT COURT**  
2   **FOR THE DISTRICT OF PUERTO RICO**

3   **UBS FINANCIAL SERVICES INC.,**  
4   **UBS FINANCIAL SERVICES**  
5   **INCORPORATED OF PUERTO RICO,**  
6   **and UBS TRUST COMPANY OF**  
7   **PUERTO RICO,**

8   **Petitioners,**

9   **v.**

**CIVIL NO. 16-2017 (GAG)**

10   **ASOCIACIÓN DE EMPLEADOS DEL**  
11   **ESTADO LIBRE ASOCIADO DE**  
12   **PUERTO RICO,**

13   **Respondent.**

14   **OPINION AND ORDER**

15                 In this action, UBS Financial Services Inc., UBS Financial Services Incorporated of Puerto  
16   Rico, and UBS Trust Company of Puerto Rico (“UBS”) seek to confirm an arbitration award (the  
17   “Award”) issued against Asociación de Empleados del Estado Libre Asociado de Puerto Rico  
18   (“AEELA”). (Docket No. 1; see also Docket No. 1-1.) AEELA answered UBS’s petition. (Docket  
19   No. 39-1.) Upon review of the parties’ submissions and applicable law, UBS’s petition to confirm  
20   the Award is **GRANTED**.

21                 **I.    Relevant Factual and Procedural Background**

22                 AEELA and UBS were parties to an investment consulting and brokerage services  
23   agreement. (Docket No. 1, ¶ 13.) Their agreement provided for arbitration of disputes before the  
24   Financial Industry Regulatory Authority’s (“FINRA”) arbitral regime. Id. at ¶ 16. The parties  
25   agreed that the results of arbitration would be final and binding. Id.

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1 After the Puerto Rican bond market collapsed in 2013, AEELA commenced arbitration  
2 against UBS seeking \$70 million in damages. (Docket Nos. 1-1; Docket No. 17-2.) On April 22,  
3 2014, AEELA filed a Statement of Claim before FINRA alleging violations of the federal securities  
4 laws and Puerto Rico state law. (Docket No. 1, ¶ 8.) The FINRA claim centered on alleged  
5 misrepresentations by UBS and the related losses sustained by AEELA on investments in Puerto  
6 Rican municipal bonds. *Id.* Specifically, AEELA alleged the losses it suffered were “caused by  
7 unsuitable recommendations” received from UBS. (Docket Nos. 1-1; 1-2.)

8 After two years of proceedings and a ten-day evidentiary hearing, the FINRA panel issued a  
9 unanimous Award denying AEELA’s claims in their entirety. (Docket No. 1, ¶¶ 17-18.) The Award  
10 also included fees in favor of UBS, as set forth under the FINRA code. (Docket No. 1-1, 3-4.) The  
11 Award did not expound upon the basis for its conclusions.

12 On June 3, 2016, UBS filed this petition to confirm the Award rendered by the FINRA panel.  
13 (Docket No. 1.) AEELA moved to dismiss for lack of subject matter jurisdiction. (Docket No. 9.)  
14 This Court denied AEELA’s jurisdictional challenge, looking through the petition to the substance  
15 of the dispute submitted and decided in arbitration, which arose under the federal securities laws.  
16 UBS Fin. Servs. Inc. v. Asociación de Empleados del Estado Libre Asociado de P.R., --- F. Supp.  
17 3d ----, No. 16-2017 (GAG), 2016 WL 7408828, at \*4 (D.P.R. Dec. 22, 2016).

18 Following the Court’s jurisdictional ruling, AEELA answered UBS’s petition. (Docket No.  
19 39-1.) AEELA’s answer admitted and denied certain facts, and contested confirmation of the award  
20 through affirmative defenses based on the alleged bias and misconduct of the arbitration panel.

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1 (Docket No. 39-1.) AEELA did not submit any evidence to this Court in support of its theory of  
2 arbitrator bias and misconduct.<sup>1</sup>

**II. Discussion**

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4 The Federal Arbitration Act, 9 U.S.C. §§ 1-16 (“FAA”), sets the framework for judicial  
5 review of arbitration awards. Section 9 provides that any party to the arbitration may apply for an  
6 order confirming the arbitration award, “and thereupon the court must grant such an order unless the  
7 award is vacated, modified, or corrected as prescribed in sections 10 and 11” of the FAA. 9 U.S.C.  
8 § 9. Grounds for vacating an award include: a fraudulently procured award; evident arbitrator  
9 corruption; arbitrator misconduct; or when the arbitrators exceeded their authority. *Id.* at § 10; *see*  
10 *also Raymond James Fin. Servs., Inc. v. Fenyk*, 780 F.3d 59, 63-65 (1st Cir. 2015).

11 District court review of arbitral awards is “extremely narrow and exceedingly deferential.”  
12 *Bull HN Info. Sys., Inc. v. Hutson*, 229 F.3d 321, 330 (1st Cir. 2000) (quoting *Wheelabrator*  
13 *Envirotech Operating Servs. Inc. v. Mass. Laborers Dist. Council Local 1144*, 88 F.3d 40, 43 (1st  
14 Cir. 1996)). Judicial review is deferential because the parties contracted to resolve their dispute  
15 through an arbitrator, so it is the arbitrator’s view of the dispute that matters. *Hutson*, 229 F.3d at  
16 330 (citing *United Paperworkers Int’l Union v. Misco, Inc.*, 484 U.S. 29, 37-38 (1987)). As a result,  
17 “[a]rbitral awards are nearly impervious to judicial oversight.” *Teamsters Local Union No. 42 v.*  
18 *Supervalu, Inc.*, 212 F.3d 59, 61 (1st Cir. 2000).

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21 <sup>1</sup> Rather than litigate its affirmative defenses before this Court, AEELA opted to file a petition to vacate  
22 the arbitration award before the Puerto Rico Court of First Instance of San Juan. (Docket No. 9 at 1.) UBS  
23 subsequently removed AEELA’s petition to federal court. AEELA’s petition to vacate is currently pending before  
24 Judge Pedro Delgado-Hernández. *See Asociación de Empleados del Estado Libre Asociado de P.R. v. UBS Fin.*  
*Servs., Inc.*, No. 16-2237 (PAD).

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1 UBS seeks to confirm the Award under section 9 of the FAA. (Docket No. 1.) Section 9  
2 dictates that courts “must grant” a petition to confirm an award, unless an exception from sections  
3 10 or 11 applies. 9 U.S.C. § 9. “There is nothing malleable about ‘must grant,’ which unequivocally  
4 tells courts to grant confirmation in all cases, except when one of the ‘prescribed’ exceptions  
5 applies.” Hall St. Assocs., L.L.C. v. Mattel, Inc., 552 U.S. 576, 587 (2008).

6 AEELA protests against confirmation of the Award. First, AEELA challenged the Award  
7 based on jurisdiction. (See Docket No. 9, 22.) This Court considered and rejected AEELA’s  
8 jurisdictional arguments. UBS Fin. Servs., 2016 WL 7408828, at \*4. The First Circuit recently  
9 confirmed this approach to determining jurisdiction of a post-arbitration petition. Ortiz-Espinosa v.  
10 BBVA Securities of P.R., Inc., --- F.3d ----, 2017 WL 343525, at \*7 (1st Cir. Jan. 20, 2017).

11 After losing the jurisdictional argument, AEELA answered UBS’s petition. (Docket No.  
12 39-1.) Now, AEELA grounds its efforts to resist confirmation of the Award in section 10(a) of the  
13 FAA, alleging bias and misconduct by the FINRA arbitrators. Id. at 3-4. However, AEELA has  
14 presented no evidence to support this argument. Id. AEELA’s barebones answer does not appear  
15 to contemplate the FAA’s instruction that an application to the Court should resemble a motion,  
16 complete with an argument and supporting evidence. See 9 U.S.C. § 6. Although AEELA had the  
17 opportunity, it elected not to support its theory with evidence.

18 Barring certain statutorily defined exceptions, section 9 of the FAA requires that courts “must  
19 grant” a petition to confirm an arbitration award. 9 U.S.C. § 9. AEELA has presented no evidence  
20 or argument for the application of any of the FAA’s exceptions. Rather, UBS’s petition easily clears  
21 the “exceedingly deferential” standard of judicial review for confirmation of an arbitration award.  
22 See Fenyk, 780 F.3d at 63 (quoting Weelabrator Envirotech, 88 F.3d at 43). Therefore, the Court  
23 grants UBS’s petition to confirm the arbitration award.

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1 **III. Conclusion**

2 For the reasons stated above, UBS's petition to confirm arbitration award is **GRANTED**.

3 **SO ORDERED.**

4 In San Juan, Puerto Rico, on this 28th day of March, 2017.

5 *s/ Gustavo A. Gelpí*  
6 GUSTAVO A. GELPI  
7 United States District Judge  
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