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UBS wins \$1 billion judgment from funds tied to bankrupt Highland Capital

Alison Frankel's On The Case
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(Reuters) - UBS was awarded more than \$1 billion in damages and interest from two funds tied to the once high-flying investment firm Highland Capital Management in an order from New York State Supreme Court Justice Marcy Friedman. Justice Friedman issued the order in November but it was first made public on Wednesday. The judge awarded the bank \$519.3 million in a dispute over a failed 2008 securitization, tacking on an additional \$520 million in statutory interest.

Back in 2007, UBS put up about \$818 million to finance the acquisition of complex credit default swaps for a planned securitization by the two Highland entities. The offering, however, never ended up reaching the market. In 2008, as the market value of the swaps fell, UBS exercised three collateral calls against the Highland entities. The funds met the first two calls for \$10 million but did not pay the third call in December 2008. UBS eventually auctioned off the securities and, in 2009, sued Highland Capital Management and the related entities for breaching the financing contract.

At a bench trial in July 2018, the funds' then-counsel from McKool Smith argued that the third collateral call was improper; that UBS had breached the contract by asserting an improper collateral call and improperly documenting credit default swaps in which UBS entities were counterparties; and that UBS miscalculated its losses.

Justice Friedman acknowledged that the contract was "inartfully drafted." But ultimately, she said, it was not ambiguous. The judge sided with UBS and its counsel from Latham & Watkins, awarding the bank all of the damages it originally sought.

UBS trial counsel Andrew Clubok of Latham said in an email statement that the bank is "pleased with the result of the trial and looks forward to final resolution of the matter."

The two funds named in the judgment for UBS are defunct. Highland Capital Management filed for Chapter 11 bankruptcy protection in October 2019, claiming \$500 million in assets. UBS is a member of the creditors' committee in the Highland Capital bankruptcy.

In an email statement, a Highland Capital Management spokeswoman said that although Justice Friedman's order addressed the two defunct funds, "the potential for a decision on this matter and subsequent proceedings in this case were considered in (Highland Capital's) decision to initiate reorganization proceedings." The investment firm, she said, "is seeking to resolve all matters related to this case through the current reorganization process."

Defendants in the UBS case are now represented by Reid Collins & Tsai.