

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between

Name of Claimant

UBS PaineWebber, Inc.

Case No. 00-00454

Name of Respondents

The (Wilson) Williams Financial Group; and  
Donald F. Garms, Jr.

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**REPRESENTATION OF PARTIES**

Claimant UBS PaineWebber, Inc. ("PaineWebber") was represented by Michael D. Lee, Esq., of the firm of Schuyler, Roche & Zwirner, located in Chicago, Illinois.

Respondent Donald F. Garms, Jr. ("Garms") represented himself.

The (Wilson) Williams Financial Group was voluntarily dismissed from the action before hearing and did not appear.

**CASE INFORMATION**

Statement of Claim filed on or about: February 2, 2000.

PaineWebber signed the Uniform Submission Agreement: February 1, 2000.

Respondent Garms did not file a Statement of Answer or a signed Uniform Submission Agreement.

**CASE SUMMARY**

PaineWebber asserted the following causes of action: breach of written contract; conversion; violation of The Oklahoma Trade Secrets Act; and breach of fiduciary duty. The causes of action result from the breach by Garms of the employment agreement he signed with Paine Webber. Shortly after executing the agreement, Garms resigned from PaineWebber to join Williams Financial and began soliciting PaineWebber's clients. In addition, Garms allegedly misappropriated PaineWebber records in violation of employment agreement.

At hearing, Garms presented a statement asking the panel to ignore the contract for lack of consideration.

### **RELIEF REQUESTED**

Claimant requested a permanent injunction against Garms preventing him from soliciting or accepting any account transfers to his new employment and ordering the return of any PaineWebber information or records in his possession; compensatory damages as justified by the evidence; pre- and post-award interest at the maximum rates provided by law; all PaineWebber's costs and expenses, including attorneys' fees; and such further relief as the Panel determined to be just and equitable.

At hearing, Respondent Garms requested that the claim be denied.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondent Garms did not file with the NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and, having appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

On March 24, 2000, the Claimant voluntarily dismissed Respondent The (Wilson) Williams Financial Group from this arbitration.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Donald F. Garms, Jr. is liable for and shall pay to the Claimant, UBS PaineWebber, Inc., the sum of \$31,666.73 as compensatory damages;
2. Respondent The (Wilson) Williams Financial Group is dismissed with prejudice pursuant to the notice of voluntary dismissal;
3. The parties shall bear their own costs of arbitration, including any attorneys' fee, except for those specifically enumerated herein; and
4. Any relief not awarded is hereby denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 500.00
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**Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person at the time of the events giving rise to the dispute. In this matter, UBS PaineWebber, Inc. is a party to the arbitration, while The (Wilson) Williams Financial Group was a party until its dismissal on March 24, 2000 and is liable for all fees accruing prior to that date.

Member surcharge	= \$ 1,200.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 2,000.00

**Adjournment Fees**

Adjournments requested during these proceedings:

January 23 and 24, 2001, adjournment by Respondent Garms = \$ 1,000.00

**Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator x \$ 450.00 = \$ 450.00  
Pre-hearing conference: December 13, 2000 1 session

One (1) Pre-hearing session with Panel x \$ 1,000.00 = \$ 1,000.00  
Pre-hearing conference: November 20, 2000 1 session

One (1) Hearing sessions x \$ 1,000.00 = \$ 1,000.00  
Hearing Date: May 1, 2001 1 session

Total Forum Fees = \$ 2,450.00

The Panel has assessed \$ 2,450.00 of the forum fees to Respondent Donald F. Garms, Jr.

**SEE SUMMARY**

Claimant UBS PaineWebber, Inc. is solely liable for:

Initial Filing Fee	= \$ 500.00
Member Fees	= \$ 3,800.00
<u>Injunctive Fee</u>	= \$ <u>2,500.00</u>
Total Fees	= \$ 6,800.00
<u>Less payments</u>	= \$ <u>7,200.00</u>
Balance Refunded to UBS PaineWebber, Inc.	= \$ 400.00

Respondent The (Wilson) Williams Financial Group is solely liable for:

Member Fees	= \$ 1,200.00
<u>Less payments</u>	= \$ <u>0</u>

Balance Due NASD Dispute Resolution, Inc. = \$ 1,200.00

Respondent Donald F. Garms, Jr. is solely liable for:

Adjournment Fee = \$ 1,000.00

Forum Fees = \$ 2,450.00

Total Fees = \$ 3,450.00

Less payments = \$ 0

Balance Due NASD Dispute Resolution, Inc. = \$ 3,450.00

All balances are due and payable to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

Preston A. Trimble, Esq. - Public Arbitrator, Presiding Chair

Robert D. Garrett, Esq. - Public Arbitrator

Robert G. Rader - Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Preston A. Trimble, Esq.  
Public Arbitrator, Presiding Chair

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Robert D. Garrett, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Robert G. Rader  
Non- Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date of Service  
(For NASD-DR office use only)

Arbitration No. 00-00454

Award Page 4

Balance Due NASD Dispute Resolution, Inc. = \$ 1,200.00

Respondent Donald F. Garms, Jr. is solely liable for:

Adjournment Fee = \$ 1,000.00

Forum Fees = \$ 2,450.00

Total Fees = \$ 3,450.00

Less payments = \$ 0

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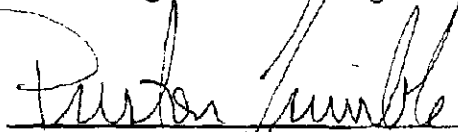
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Preston A. Trimble, Esq.  
Public Arbitrator, Presiding Chair

30 May 01  
Signature Date

Robert D. Garrett, Esq.  
Public Arbitrator

Signature Date

Robert G. Rader  
Non-Public Arbitrator

Signature Date

5-30-01

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NASD Dispute Resolution, Inc.  
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5/29/01  
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