

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

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In the Matter of the Arbitration Between:

BBBB, LP v. PaineWebber, Incorporated, PaineWebber Group, Inc., UBS Warburg LLC,  
UBS AG, and EricWormser

Case Number: 00-05289

Hearing Site: Houston, Texas

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**REPRESENTATION OF PARTIES**

Claimant BBBB, LP( "BBBB") was represented by Jack H. Halperin, Esq, located in New York, New York.

Respondents PaineWebber, Incorporated ("PaineWebber"), PaineWebber Group, Inc. ("PaineWebber Group"), UBS Warburg LLC ("Warburg"), UBS AG ("AG"), and EricWormser ("Wormser") hereinafter collectively referred to as "Respondents." were represented by Charles W. Schwartz, Esq., and Wallis M. Hampton of Vinson & Elkin, Los Angeles, California.

**CASE INFORMATION**

Statement of Claim filed on or about: December 1, 2000.

Claimant signed the Uniform Submission agreement on November 28, 2000.

Respondents PaineWebber, Incorporated, PaineWebber Group, UBS AG, UBS Warburg, LLC and Eric B. Wormser filed a Joint Statement of Answer on January 22, 2000.

Respondent PaineWebber signed the Uniform Submission Agreement on January 22, 2001.

Respondent Eric B. Wormser signed the Uniform Submission Agreement on January 22, 2001.

Respondents UBS Warburg, LLC, UBS AG and PaineWebber Group did not sign the Uniform Submission Agreement.

### CASE SUMMARY

The Claimant alleged the following cause of action against the Respondents: excessive commissions charged; failure to effect transactions in BBBB's account per Claimant's instructions; negligence, error and omissions; breach of contract; misrepresentation of facts, providing false information and concealment of the true status of BBBB's account; and failure to implement strategies to recoup losses, e.g. "straddle strategy" provided by Claimant.

Respondents PaineWebber, Incorporated, and Eric Wormser denied all of the allegations in the Statement of Claim and set forth the following affirmative defenses: the trades at issue were unsolicited and no liability arises from them; Claimant failed to exercise due diligence in monitoring investments; Claimant failed to mitigate alleged damages; Claimant failed to state a claim for punitive damages or compensatory damages; Claimant has failed to state a claim upon which relief can be granted; Claimant's causes of action are barred by the doctrines of ratification, waiver, and estoppel; any recommendations that Respondents may have made were suitable for the Claimant; Respondent did not act with scienter or any reckless or negligent disregard of the truth; Claimant assumed the risks of the trading strategy; the transactions complained of in the Statement of Claim were duly authorized by Claimant, who, at all times, was in sole control of the assets in the account; Claimant's alleged losses were caused by Claimant's own negligence; Claimant's alleged losses were not proximately caused by any alleged misconduct of Respondents; Claimant's losses cannot be attributed to any statements or actions of Respondents, but rather are due to extraneous market conditions over which Respondents had no control; Claimant had the opportunity and means to mitigate damages in the account but failed to do so in a reasonable and appropriate manner.

### RELIEF REQUESTED

Claimants requested:

Compensatory Damages	\$1,358,985.32
Punitive Damages	\$2,435,941.28
Interest	Unspecified
Attorneys' Fees	Unspecified

Respondents requested that all claims against them be dismissed in their entirety, that an award be rendered in their favor of the costs of this proceeding and that all reference to these claims be expunged from Mr. Wormsers' CRD.

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

During the hearing on the merits the Claimant dismissed UBS AG, PaineWebber Group, Inc., and UBS Warburg L.L.C. At the conclusion of the hearing the panel ordered the parties to submit post-hearing briefs. Claimant submitted its brief on or about February 1, 2002 and Respondent submitted a response to Claimants brief or about February 22, 2002. Respondents requested that the Panel award expert witness fees to Respondent in the amount of \$100,000.00 and that all references to this case be expunged from the NASD Central Registration Depository. After reviewing all post hearing submissions, the panel denied all additional claims set forth by the parties.

Respondents PaineWebber Group Inc., UBS AG and UBS Warburg LLC did not file with NASD Dispute Resolution, Inc., a properly executed submission to arbitration but are required to submit to arbitration pursuant to the Code and are bound by the determination of the Panel on all issues submitted.

### **AWARD**

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

1. The Respondents UBS PaineWebber Group is liable for and shall pay to BBBB, LP the sum of \$25,688.00 in compensatory damages;
2. Except as otherwise specified herein, each party shall bear its own costs and attorneys' fees; and
3. Any and all relief not specifically addressed herein, including punitive damages, is 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 = \$ 600.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firms are Respondents UBS PaineWebber Inc., UBS AG, and UBS Warburg L.L.C.

Member surcharge	= \$2,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$4,500.00

**Adjournment Fees**

Adjournments requested during these proceedings: None

**Forum Fees and Assessments**

The panel has the authority to assess forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$1,200.00	= \$ 1,200.00
Pre-hearing conferences: June 15, 2001 1 session	
Eight (8) Hearing sessions x \$1,200.00	= \$ 9,600.00
Hearing Dates: December 11, 2002 2 sessions	
December 12, 2002 2 sessions	
December 13, 2002 2 sessions	
December 14, 2002 2 sessions	
<hr/> Total Forum Fees	<hr/> =\$10,800.00

The Panel has assessed \$5,400.00 of the forum fees jointly and severally to Respondent UBS PaineWebber, Inc., UBS AG, and UBS Warburg L.L.C.

The Panel has assessed \$5,400.00 of the Forum fees to Claimant BBBB, LP.

**FEE SUMMARY**

Claimant BBBB, LP, is solely liable for:

Initial Filing Fee	= \$ 600.00
<u>Forum Fees</u>	<u>= \$ 5,400.00</u>
Total Fees	= \$ 6,000.00
<u>Less payments</u>	<u>= \$ 6,000.00</u>
Balance due to NASD Dispute Resolution, Inc.	= \$ 00

Respondent UBS PaineWebber, Inc. is solely liable for:

Member Fees	= \$ 7,600.00
<u>Total Fees</u>	<u>= \$ 7,600.00</u>
<u>Less payments</u>	<u>= \$ 7,600.00</u>
Balance due to NASD Dispute Resolution, Inc.	= \$ 00

Respondents UBS PaineWebber, Inc., UBS AG, and UBS Warburg L.L.C. are jointly and severally liable for

Forum Fees	= \$ 5,400.00
<u>Less payments</u>	<u>= \$ 5,400.00</u>
Balance due to NASD Dispute Resolution, Inc.	= \$ 00

Respondent UBS Warburg is solely liable for:

Member Fees	= \$ 7,600.00
<u>Less payments</u>	<u>= \$ 7,600.00</u>
Balance due to NASD Dispute Resolution, Inc.	= \$ 00

All balances are due to NASD Dispute Resolution

**ARBITRATION PANEL**

Sharon Jevett Hemphill, Esq	-	Public Arbitrator, Presiding Chair
Patricia R. Lykos, J.D.	-	Public Arbitrator
Kathy R. Holler	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Sharon Jevett Hemphill, Esq  
Public Arbitrator, Presiding Chair

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Signature Date

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Patricia R. Lykos, J.D.  
Public Arbitrator

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

\_\_\_\_\_  
Kathy R. Holler  
Non-Public Arbitrator

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

7/2/03

Date of Service (For NASD-Dispute Resolution office use only)

NASD Dispute Resolution, Inc.  
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Respondents UBS PaineWebber, Inc., UBS AG, and UBS Warburg L.L.C. are jointly and severally liable for

Forum Fees	= \$	5,400.00
<u>Less payments</u>	= \$	<u>5,400.00</u>
Balance due to NASD Dispute Resolution, Inc.	= \$	00

Respondent UBS Warburg is solely liable for:


Member Fees	= \$	7,600.00
<u>Less payments</u>	= \$	<u>7,600.00</u>
Balance due to NASD Dispute Resolution, Inc.	= \$	00

All balances are due to NASD Dispute Resolution

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Sharon Jevert Hemphill, Esq	-	Public Arbitrator, Presiding Chair
Patricia R. Lykos, J.D.	-	Public Arbitrator
Kathy R. Holler	-	Non-Public Arbitrator

### Concurring Arbitrators' Signatures

  
 Sharon Jevert Hemphill, Esq  
 Public Arbitrator, Presiding Chair

5-6-03  
 Signature Date

\_\_\_\_\_  
 Patricia R. Lykos, J.D.  
 Public Arbitrator

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

\_\_\_\_\_  
 Kathy R. Holler  
 Non-Public Arbitrator

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 Signature Date

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 Date of Service (For NASD-Dispute Resolution office use only)

Respondents UBS PaineWebber, Inc., UBS AG, and UBS Warburg L.L.C. are jointly and severally liable for

Forum Fees	= \$	5,400.00
<u>Less payments</u>	= \$	<u>5,400.00</u>
Balance due to NASD Dispute Resolution, Inc.	= \$	00

Respondent UBS Warburg is solely liable for:

Member Fees	= \$	7,600.00
<u>Less payments</u>	= \$	<u>7,600.00</u>
Balance due to NASD Dispute Resolution, Inc.	= \$	00

All balances are due to NASD Dispute Resolution

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Sharon Jevert Hemphill, Esq  
Public Arbitrator, Presiding Chair

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Signature Date

  
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Patricia R. Lykos, J.D.  
Public Arbitrator

 21, 2007  
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Signature Date

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Kathy R. Holler  
Non-Public Arbitrator

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

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

NASD Dispute Resolution, Inc.  
Arbitration Case #: 00-05289  
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Member Fees	= \$ 7,600.00
Total Fees	= \$ 7,600.00
Less payments	= \$ 7,600.00
Balance due NASD Dispute Resolution, Inc.	= \$ 00

Respondents PaineWebber, Inc., PaineWebber Group Inc., UBS AG, and USB Warburg are jointly and severally liable for:

Forum Fees	= \$ 5,400.00
Less payments	= \$ 00
Balance Due to NASD Dispute Resolution Inc.	= \$ 5,400.00

Respondent UBS Warburg is soley liable for:

Member Fees	= \$ 7,600.00
Less payments	= \$ 7,600.00
Balance due NASD Dispute Resolution, Inc.	= \$ 00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

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Patricia R. Lykos, J.D.	-	Public Arbitrator
Kathy R. Holler	-	Non-Public Arbitrator

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Sharon Jevert Hemphill, Esq  
Public Arbitrator, Presiding Chair

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Signature Date

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Patricia R. Lykos, J.D.  
Public Arbitrator

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Signature Date

  
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Kathy R. Holler  
Non-Public Arbitrator

MAR 18, 2003  
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Signature Date