

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimant

UBS PaineWebber, Inc.

Case No. 01-00426

Name of Respondent

Steve E. Korman

Hearing Site: Pittsburgh, Pennsylvania

REPRESENTATION OF PARTIES

Claimant, UBS PaineWebber, Inc. ("PaineWebber"), hereinafter referred to as "Claimant":
Romaine L. Gardner, Esq., Attorney at Law, Staten Island, NY.

Respondent, Steve E. Korman ("Korman"), hereinafter referred to as "Respondent": Robert M.
Kramer, Esq., Attorney at Law, Pittsburgh, PA.

CASE INFORMATION

Statement of Claim filed on or about: December 12, 2000
Claimant's representative signed an undated Uniform Submission Agreement
Statement of Answer and Counterclaim filed by Respondent on or about: May 15, 2001
Respondent signed the Uniform Submission Agreement: May 5, 2001
Claimant's Reply to Respondent's Statement of Answer and Claimant's Statement of Answer
to Respondent's Counterclaim filed on or about: May 26, 2001

CASE SUMMARY

Claimant asserted the following causes of action: failure to pay a debit balance. The cause of action relates to the order execution of Autobyte.com Inc. ("ABTL") stock.

Unless specifically admitted in his Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses, among others: Claimant engaged in an unauthorized purchase; negligence; and, failure to mitigate.

In his Counterclaim, Respondent asserted the following causes of action: negligence;

Claimant acted in bad faith by initiating a civil lawsuit in Kentucky to resolve this dispute; and, Claimant committed a bad-faith breach of its implied contract to arbitrate this dispute.

Unless specifically admitted in its Reply, Claimant denied the allegations made in the Counterclaim and asserted the following defenses, among others: Respondent's failure to disclaim any of the transactions of which he complains constitutes a ratification of these transactions and a waiver or estoppel of Respondent's right to any recovery sought in the Counterclaim; and, Claimant had every right to commence a civil lawsuit in Kentucky to resolve this dispute when Respondent did not execute an agreement to arbitrate disputes with Claimant.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$20,109.20
Interest	unspecified amount
Other Costs	\$ 1,450.00

Respondent requested Attorneys' Fees in the amount of \$900.00, and an Award ordering Claimant to dismiss its lawsuit against respondent in the Circuit Court of Warren County, Kentucky.

OTHER ISSUES CONSIDERED AND DECIDED

Claimant's request that the hearing in this matter take place in Louisville, Kentucky was denied by the arbitrator.

ARBITRATOR'S FINDINGS

On March 26, 1999 the Respondent Steve E. Korman instructed his broker Jeff Mullins to buy 1000 shares of ABTL. Mr. Korman's order was executed at the market, which at that time was \$56.00 per share, for a total price, including a \$50 commission and a \$4.00 handling charge, of \$56,054.00. Because Mr. Korman did not pay for the ABTL shares, they were sold on April 9, 1999, at \$36.00 per share for a total price, less commission, handling chages and fees for \$35,944.80. The sale left a debit in Mr. Korman's account in the amount of \$20,109.20.

PaineWebber alleges that the order was "unsolicited" and "at the market", and that the customer refused to pay for the shares after they were purchased.

Mr. Korman the customer alleges that he ordered the purchase of 1,000 shares of ABTL, only if the price of the stock reached \$60 and since the price of ABTL did not reach \$60, the order

should not be executed and he is therefore not obligated to pay for the shares.

There were no witnesses other than Mr. Mullins, the broker, and Mr. Korman, the customer. Thus it is one person's work against the other as to what was said. I have taken into consideration the fact that Mr. Korman's pattern of trading in his account with PaineWebber over a period of many years was to purchase "new issues" at the IPO price. PaineWebber would send Mr. Korman its syndicate listings and he would then give his broker an "indication of interest" for 500 or 1000 shares. In a number of instances he received allotments of 100 or 400 shares. ABTL was a "new issue" and Mr. Korman did not receive an allocation at the IPO price of \$18. Since the stock had moved significantly in the after-market trading, Mr. Korman was inclined to buy to take advantage of the momentum in the marketplace. The shares traded as high as \$58 but did not reach \$60 on the day of the transaction, or at any time thereafter.

Thus there is a question that could be raised as to whether the transaction was indeed "unsolicited" since the stock was on a listing sent to Mr. Korman, and but for that "solicitation", he might not have been attracted to the stock. Mr. Korman had a previous transaction under similar circumstances (i.e. he put in an indication to buy and IPO at \$14, did not get any allocation, and bought it in the after-market at \$39.25 and sold the same day at \$42, for a profit). These two transaction were executed in the "after-market" in a IPO security and the 14 other transactions in the account were all at the IPO price (i.e. transaction purchased at the public offering price and generally sold the same day at a profit).

The ABTL (and other trade) made within close proximity of each other in point of time were out of the ordinary pattern of trading and were of a significantly larger size in terms of number of shares and dollar volume than other trades in the account. Thus it does appear that the broker was permitting the customer to assume too great a risk in becoming a participant in this type of transaction, despite the customer's claim that he is "experienced." The reality is - Mr. Korman may be experienced and knowledgeable in the trading of IPO shares when purchased at the IPO price but may not be experience or knowledgeable in after-market trading of IPO securities.

AWARD

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

1. That Claimant's claim is denied in its entirety;
2. That Respondent's claim is denied in its entirety;
3. That the parties shall bear their respective costs and attorney's fees except as Fees are

specifically addressed below; and,

4. Any and all requests for relief not specifically addressed herein are denied in their entirety.

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	= \$750
Counter claim filing fee	= \$ 25

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 event(s) giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$400
Pre-hearing process fee	= \$ 00
Hearing process fee	= \$ 00

Forum Fees and Assessments

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

One (1) Pre-hearing session with NASD Dispute Resolution, Inc. staff	= \$00
Pre-hearing conference: October 3, 2001	1 session
One (1) Pre-hearing session with a single arbitrator x \$450	= \$450
Pre-hearing conference: October 24, 2001	1 session
One (1) Hearing session x \$450	= \$450
Hearing Date: January 18, 2002	1 session
Total Forum Fees	= \$900

The Arbitrator has assessed \$450 of the forum fees to Claimant.
The Arbitrator has assessed \$450 of the forum fees to Respondent.

Fee Summary

Claimant is assessed the following fees:

Initial Filing Fee	= \$ 750
Member Fees	= \$ 400
Forum Fees	= \$ 450

Total Fees	= \$ 1,600
Less payments	= \$ 1,450

Balance Due NASD Dispute Resolution, Inc.	= \$ 150
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Respondent is assessed the following fees:

Filing Fee	= \$ 25
Forum Fees	= \$450

Total Fees	= \$475
Less payments	= \$ 50

Balance Due NASD Dispute Resolution, Inc.	= \$425
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All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

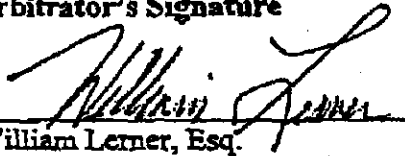
William Lerner, Esq.

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Public Arbitrator, Presiding Chairman

NASD Dispute Resolution, Inc.
Arbitration No. 01-00426
Award Page 6

Arbitrator's Signature


William Lerner, Esq.

Public Arbitrator, Presiding Chairman

February 26, 2002
Signature Date

2/27/2002
Date of Service (For NASD-Dispute Resolution office use only)