

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Anne F. Rose, Claimant v. UBS Financial Services Inc., CIBC World Markets Corp. (also known as CIBC Oppenheimer), San Clemente Securities, Inc., Interfirst Capital Corporation, Richard D. White, Bradford A. Phillips, Otto C. Johnson, Brian F. Porter, Thomas H. Sunderland, Cooke B. Christopher, United Custodial Corporation, US Trust of California, Financial Management Resources, Lisa McDonald, Provident Bank, LaSalle National Bank, NA, and Correspondent Services Corporation, Respondents

Case Number: 01-02810

Hearing Site: Los Angeles, California

Nature of the Dispute: Customer vs. Members, Non-Members, and Associated Persons

REPRESENTATION OF PARTIES

For Claimant:

Timothy D. Murphy, Esq.
Law Offices of James Jay Seltzer
Emeryville, California

For Respondent UBS Financial Services Inc.:

Mauricio Rauld, Esq.
Kessel, Young & Logan
Long Beach, California

For Respondent CIBC World Markets Corp.:
(also known as CIBC Oppenheimer)

Mark E. Kaplan, Esq.
CIBC World Markets Corp.
New York, New York

For Respondent San Clemente Securities, Inc.:

Cooke B. Christopher
San Clemente Securities, Inc.
San Clemente, California

For Respondent Interfirst Capital Corporation:

Eric Redwine, Esq.
Redwine Law Offices
Dallas, Texas

For Respondent Richard D. White:

In Propria Persona
Orange, California

For Respondent Bradford A. Phillips:

Eric Redwine, Esq.
Redwine Law Offices
Dallas, Texas

For Respondent Otto C. Johnson:

In Propria Persona
Las Vegas, Nevada

For Respondent Brian F. Porter:

In Propria Persona
Chandler, Arizona

For Respondent Thomas H. Sunderland:

In Propria Persona
San Clemente, California

For Respondent Cooke B. Christopher:

In Propria Persona
San Clemente, California

For Respondent United Custodial Corporation:

Corporate Officer
San Clemente, California

For Respondent US Trust of California:

Corporate Officer
San Clemente, California

For Respondent Financial Management Resources:

Corporate Officer
Las Vegas, Nevada

For Respondent Lisa McDonald:

In Propria Persona
San Clemente, California

For Respondent Provident Bank:

Corporate Officer
Cincinnati, Ohio

For Respondent LaSalle National Bank, NA:

Corporate Officer
Chicago, Illinois

For Respondent Correspondent Services Corporation:

Mauricio Rauld, Esq.
Kessel, Young & Logan
Long Beach, California

CASE INFORMATION

Statement of Claim filed: May 25, 2001

Claimant's Uniform Submission Agreement signed: May 23, 2001

Statement of Answer filed by Respondent Otto C. Johnson: October 15, 2001

Respondent Otto C. Johnson's Uniform Submission Agreement signed: October 5, 2001

Respondent Otto C. Johnson's repudiation of his October 5, 2001 Uniform Submission Agreement filed: October 31, 2003

CASE SUMMARY

Claimant alleged the following claims with respect to investments in various certificates of deposit: 1) Unsuitability; 2) Misleading Advertising; 3) Omissions and Misrepresentations of Material Fact; 4) Negligent Supervision and Failure to Supervise; 5) Negligence; 6) Respondeat Superior; 7) Breach of Contract; 8) Breach of Fiduciary Duty; 9) Common Law Fraud; 10) Violation of Rule 10b-5; 11) Violation of Corporations Code Sections 25401 and 25504.1; 12) Unfair Competition; and 13) Successor Liability.

Respondent Otto C. Johnson denied Claimant's allegations of wrongdoing and denied any liability to Claimant.

RELIEF REQUESTED

Claimant requested:

1. Damages in the amount of \$34,722.64
2. Punitive damages in the amount of \$500,000;
3. Attorney's fees;
4. Costs; and
5. Such other relief as the Panel deems just and appropriate.

Claimant also requested a reasoned decision by the Panel.

OTHER ISSUES CONSIDERED AND DECIDED

Prior to the hearing, the Panel was advised that Respondents United Custodial Corporation, US Trust of California, Provident Bank, LaSalle National Bank N.A., Financial Management Resources and Lisa McDonald were invited to voluntarily submit to arbitration and that said Respondents did not voluntarily submit to NASD Dispute Resolution ("NASD-DR") jurisdiction and were removed as parties in this matter.

Prior to the hearing, the Panel was advised that Claimant reached a settlement with Respondents CIBC World Markets Corp., Bradford A. Phillips, Correspondent Services Corporation and UBS Financial Services Inc. Said Respondents were dismissed with prejudice.

On or about March 7, 2001, Respondent Cooke B. Christopher advised NASD-DR that Respondent San Clemente Securities was under Chapter 7 bankruptcy protection. On or about August 10, 2001, Claimant filed a copy of the bankruptcy court order lifting the bankruptcy stay with NASD-DR, thus permitting the above-referenced arbitration to proceed with respect to San Clemente Securities.

On or about February 5, 2003, the Panel was advised of the bankruptcy filing by InterFirst Capital Corporation and that the above-referenced matter was stayed with respect to InterFirst Capital Corporation. Said Respondent did not file with NASD-DR a Statement of Answer or a properly executed submission to arbitration.

Respondents UBS Financial Services Inc., CIBC World Markets Corp., San Clemente Securities, Inc., Correspondent Services Corporation, Richard D. White, Bradford A. Phillips, Brian F. Porter, Thomas H. Sunderland, and Cooke B. Christopher did not file with NASD-DR a Statement of Answer. Said Respondents did not file properly executed submissions to arbitration. The Panel determined that said Respondents have been properly served with Claimant's Statement of Claim and further determined that said Respondents are required to submit to arbitration pursuant to the NASD-DR Code of Arbitration Procedure ("the Code") and are bound by the determination of the Panel on all issues submitted.

Respondents San Clemente Securities, Otto C. Johnson, Thomas H. Sunderland, Richard D. White, Brian F. Porter, and Cooke B. Christopher did not appear at the evidentiary hearing in this matter. Pursuant to Rule 10318 of the Code, the Panel determined that said Respondents received proper notice of the hearing and ruled to proceed in Respondents' absence.

The parties present at hearing 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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondents San Clemente Securities, Otto C. Johnson, Thomas H. Sunderland, Richard D. White, Brian F. Porter, and Cooke B. Christopher are jointly and severally liable to and shall pay Claimant the sum of \$8,537.07 in compensatory damages, less credits as hereinafter set forth.
- 2) Respondents San Clemente Securities, Otto C. Johnson, Thomas H. Sunderland, Richard D. White, Brian F. Porter, and Cooke B. Christopher are jointly and severally liable to and shall pay Claimant the sum of \$17,074.14 in punitive damages, less credits as hereinafter set forth.
- 3) Respondents San Clemente Securities, Otto C. Johnson, Thomas H. Sunderland, Richard D. White, Brian F. Porter, and Cooke B. Christopher are jointly and severally liable to and shall pay Claimant the sum of \$34,000.00 in attorneys' fees.
- 4) Respondents San Clemente Securities, Otto C. Johnson, Thomas H. Sunderland, Richard D. White, Brian F. Porter, and Cooke B. Christopher are entitled to and are hereby granted an offset for settlement credits Claimant received pursuant to confidential settlement agreements with Respondents Bradford A. Phillips, CIBC World Markets Corp., Correspondent Services Corporation and UBS Financial Services Inc. in the total amount of \$10,500.00.
- 5) The total amount of Claimant's recovery, therefore, is \$49,111.21.
- 6) All other relief not expressly granted is denied.

FEEs

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD-DR received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee = \$375.00

Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, CIBC World Markets Corp., Correspondent Services Corporation, and UBS Financial Services Inc. are parties and each are assessed the following fees:

CIBC World Markets Corp.

| | |
|--------------------------------|--------------|
| Member Surcharge | = \$2,000.00 |
| <u>Pre-Hearing Process Fee</u> | = \$ 600.00 |
| Total Member Fees | = \$2,600.00 |

Correspondent Services Corporation

| | |
|----------------------------|--------------|
| Member Surcharge | = \$2,000.00 |
| Pre-Hearing Process Fee | = \$ 600.00 |
| <u>Hearing Process Fee</u> | = \$3,500.00 |
| Total Member Fees | = \$6,100.00 |

UBS Financial Services Inc.

| | |
|----------------------------|--------------|
| Member Surcharge | = \$2,000.00 |
| Pre-Hearing Process Fee | = \$ 600.00 |
| <u>Hearing Process Fee</u> | = \$3,500.00 |
| Total Member Fees | = \$6,100.00 |

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chairperson and/or the Panel that lasts four (4) hours or less. The following fees are assessed:

| | |
|---|--------------|
| (2) Pre-hearing conference sessions with the Panel @ \$1,200.00/session | = \$2,400.00 |
| Pre-hearing conferences: April 28, 2003 | 1 session |
| July 22, 2003 | 1 session |

(1) Hearing sessions @ \$1,200.00/session = \$1,200.00
Hearing: November 3, 2003 1 session

Total Forum Fees = \$3,600.00

1. The Panel assessed the \$1,200.00 in forum fees jointly and severally to Respondents Correspondent Services Corporation, UBS Financial Services Inc., San Clemente Securities, Bradford A. Phillips, Otto C. Johnson, Thomas H. Sunderland, Richard D. White, Brian F. Porter, and Cooke B. Christopher for the April 28, 2003 initial pre-hearing conference.
2. The Panel assessed the \$1,200.00 in forum fees jointly and severally to Respondents San Clemente Securities, Otto C. Johnson, Thomas H. Sunderland, Richard D. White, Brian F. Porter, and Cooke B. Christopher for the November 3, 2003 evidentiary hearing.
3. The Panel waived the 1,200.00 forum fee for the July 22, 2003 pre-hearing conference call.

Fee Summary

1. Claimant is charged with the following fees and costs:

| | |
|----------------------------|------------------------|
| Initial Filing Fee | = \$ 375.00 |
| <u>Less Payments</u> | = \$ (1,575.00) |
| Refund Due Claimant | = \$ (1,200.00) |

2. Respondent CIBC World Markets Corp. is charged with the following fees and costs:

| | |
|--|------------------------|
| Member Fees | = \$ 2,600.00 |
| <u>Less Payments</u> | = \$ (6,100.00) |
| Refund Due CIBC World Markets Corp. | = \$ (3,500.00) |

3. Respondent Correspondent Services Corporation is charged with the following fees and costs:

| | |
|----------------------------|------------------|
| Member Fees | = \$ 6,100.00 |
| <u>Less Payments</u> | = \$ (6,100.00) |
| Balance Due NASD-DR | = \$ 0.00 |

4. Respondent UBS Financial Services Inc. is charged with the following fees and costs:

| | |
|----------------------------|------------------|
| Member Fees | = \$ 6,100.00 |
| <u>Less Payments</u> | = \$ (6,100.00) |
| Balance Due NASD-DR | = \$ 0.00 |

5. Respondents Bradford A. Phillips, Correspondent Services Corporation, UBS Financial Services Inc., San Clemente Securities, Otto C. Johnson, Thomas H. Sunderland, Richard D. White, Brian F. Porter, and Cooke B. Christopher are charged jointly and severally with the following fees and costs:

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|---|----------------------|
| Forum Fee for April 28, 2003 initial pre-hearing conference | = \$ 1,200.00 |
| <u>Less Payments</u> | <u>= \$ (0.00)</u> |
| Balance Due NASD-DR | = \$ 1,200.00 |

6. Respondents San Clemente Securities, Otto C. Johnson, Thomas H. Sunderland, Richard D. White, Brian F. Porter, and Cooke B. Christopher are charged jointly and severally with the following fees and costs:

| | |
|--|----------------------|
| Forum Fee for November 3, 2003 evidentiary hearing | = \$ 1,200.00 |
| <u>Less Payments</u> | <u>= \$ (0.00)</u> |
| Balance Due NASD-DR | = \$ 1,200.00 |

All balances are payable to NASD Dispute Resolution and are payable upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

| | | |
|-----------------------------|---|------------------------------------|
| Richard J. Stall, Jr., Esq. | - | Public Arbitrator, Presiding Chair |
| Robert J. Kilpatrick, JD | - | Public Arbitrator |
| Barry A. Mainardi | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures

Richard J. Stall, Jr., Esq.
Chair, Public Arbitrator

Signature Date

Robert J. Kilpatrick, JD
Public Arbitrator

Signature Date



Barry A. Mainardi
Non-Public Arbitrator

11-6-03

Signature Date

Date of Service

ARBITRATION PANEL

| | | |
|-----------------------------|---|------------------------------------|
| Richard J. Stall, Jr., Esq. | - | Public Arbitrator, Presiding Chair |
| Robert J. Kilpatrick, JD | - | Public Arbitrator |
| Barry A. Mainardi | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures

Richard J. Stall, Jr., Esq.
Chair, Public Arbitrator

Signature Date


Robert J. Kilpatrick, JD
Public Arbitrator

11-12-03

Signature Date

Barry A. Mainardi
Non-Public Arbitrator

Signature Date

Date of Service

ARBITRATION PANEL

Richard J. Stall, Jr., Esq.
Robert J. Kilpatrick, JD
Barry A. Mainardi

Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures


Richard J. Stall, Jr., Esq.
Chair, Public Arbitrator

Robert J. Kilpatrick, JD
Public Arbitrator

Barry A. Mainardi
Non-Public Arbitrator

November 6 2003
Signature Date

Signature Date

Signature Date

Date of Service

ARBITRATION PANEL

| | | |
|-----------------------------|---|------------------------------------|
| Richard J. Stall, Jr., Esq. | - | Public Arbitrator, Presiding Chair |
| Robert J. Kilpatrick, JD | - | Public Arbitrator |
| Barry A. Mainardi | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures

Richard J. Stall, Jr., Esq.
Chair, Public Arbitrator

Signature Date

Robert J. Kilpatrick, JD
Public Arbitrator

Signature Date

Barry A. Mainardi
Non-Public Arbitrator

Signature Date

November 12, 2003
Date of Service