

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Elyse Fradkin (Claimant) v. UBS PaineWebber, Inc. n/k/a UBS Financial Services, Inc.  
and Arlene Kaplan (Respondents)

Case Number: 02-05859

Hearing Site: New York, New York

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Nature of the Dispute: Customer vs. Member and Associated Person.

**REPRESENTATION OF PARTIES**

Claimant Elyse Fradkin ("Fradkin") hereinafter referred to as "Claimant": John Lawrence Allen, Esq., Law Offices of John Lawrence Allen, New York, NY.

Respondents UBS PaineWebber, Inc. n/k/a UBS Financial Services, Inc. ("UBS") and Arlene Kaplan ("Kaplan") hereinafter collectively referred to as "Respondents": Kenneth G. Crowley, Esq., UBS PaineWebber, Inc., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: September 30, 2002.

Claimant signed the Uniform Submission Agreement: September 11, 2002.

Joint Statement of Answer filed by Respondents on or about: December 30, 2002.

UBS signed the Uniform Submission Agreement: December 30, 2002.

Kaplan signed the Uniform Submission Agreement: December 30, 2002.

**CASE SUMMARY**

Claimant asserted the following causes of action: common law fraud; breach of fiduciary duty and breach of the implied covenant of good faith and fair dealing; material omission of fact; fraudulent misrepresentation; negligence misrepresentation; professional negligence; breach of contract; violation of Sections 10(B) and 10(B)(5) of the Securities Exchange Act of 1934; violation of Section 20 of the Securities Exchange Act of 1934; violation of Section 15 of the Securities Exchange Act of 1933; violation of Section 12(2) of the Securities Exchange Act of 1933; and respondeat superior. Claimant's claim involved shares of Qualcomm as well as other unspecified securities.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

Claimant requested damages in the amount of \$182,678.00; pre-award and post-award interest; undisclosed profits, commissions, and mark-ups and mark-downs; costs of NASD filing fees and arbitration session fees; expert witness fees; other costs and expenses of bringing this arbitration; attorneys' fees; and such other and further relief as the arbitrators deem just and equitable.

Respondents requested dismissal of this proceeding, expungement of this matter from the CRD record of Arlene S. Kaplan, an award in its favor of the costs and disbursements of this proceeding, and such other and further relief as is just.

**OTHER ISSUES CONSIDERED AND DECIDED**

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, and 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. The claims of Claimant against Respondent Kaplan are dismissed in their entirety.
2. UBS is liable for and shall pay to Claimant management fees in the amount of \$27,000.00, plus interest at the rate of 9% per annum beginning to accrue thirty days from the date of the award through date of payment of the award.
3. Respondent Kaplan's request for expungement is denied.
4. Any and all relief not specifically addressed herein is denied.

**FEES**

Pursuant to the Code, the following fees are assessed:

**Filing Fees**

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

Initial claim filing fee = \$300.00

**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. Accordingly, UBS PaineWebber, Inc. n/k/a UBS Financial Services, Inc. is a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A 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 @ \$1,125.00	= \$ 1,125.00
Pre-hearing conference: June 23, 2003 1 session	
Fourteen (14) Hearing sessions @ \$1,125.00	= \$15,750.00
Hearing Dates: November 5, 2003 2 sessions	
November 6, 2003 2 sessions	
November 18, 2003 2 sessions	
November 19, 2003 2 sessions	
December 16, 2003 2 sessions	
February 5, 2004 2 sessions	
February 6, 2004 2 sessions	
<hr/> Total Forum Fees	<hr/> = \$16,875.00

1. The Panel has assessed \$16,875.00 of the forum fees against UBS.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. Claimant requested duplication of cassette tapes = \$165.00
2. UBS requested duplication of cassette tapes = \$ 90.00

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Administrative Costs</u>	<u>= \$ 165.00</u>
Total Fees	= \$ 465.00

<u>Less payments</u>	= \$1,425.00
Refund Due Claimant	= \$ 960.00

2. UBS is solely liable for:

Member Fees	= \$ 5,200.00
Forum Fees	= \$16,875.00
<u>Administrative Costs</u>	= \$ 90.00
Total Fees	= \$22,165.00
<u>Less payments</u>	= \$ 5,290.00
Balance Due NASD Dispute Resolution	= \$16,875.00

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

Irene J. Duffy, J.D.	-	Public Arbitrator, Presiding Chair
Susan Mills Richmond, Esq.	-	Public Arbitrator
Theodor Brown	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who execute this instrument, which is my award.

\_\_\_\_\_  
Irene J. Duffy, J.D.  
Public Arbitrator, Presiding Chairperson

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Signature Date

  
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Susan Mills Richmond, Esq.  
Public Arbitrator

3/1/04  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Theodor Brown  
Non-Public Arbitrator

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Signature Date

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March 5, 2004

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Date of Service (For NASD Dispute Resolution use only)

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Susan Mills Richmond, Esq.	-	Public Arbitrator
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Signature Date

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Susan Mills Richmond, Esq.  
Public Arbitrator

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Signature Date

  
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