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

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In the Matter of the Arbitration Between:

Name of the Claimant

Joseph V. Royer

Case Number: 02-06155

Names of the Respondents

James Wesley Gutner

UBS PaineWebber, Inc. f/k/a PaineWebber Incorporated

Robert W. Baird & Co. Incorporated

Hearing Site: Boca Raton, Florida

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

**REPRESENTATION OF PARTIES**

For Joseph V. Royer, hereinafter referred to as "Claimant": Steven D. Hutton, Esq., Steven D. Hutton, P.L., Sarasota, Florida.

For Respondent James Wesley Gutner ("Gutner"): Kathy M. Klock, Esq. and Jonathan Butler, Esq., Steel Hector & Davis, LLP, West Palm Beach, Florida, and Martin Q. Ryan, Esq., Mora Baugh Waitzman & Unger, LLC, Chicago, Illinois.

For Respondent UBS PaineWebber, Inc. f/k/a PaineWebber Incorporated ("UBS"): Kathy M. Klock, Esq. and Jonathan Butler, Esq., Steel Hector & Davis, LLP, West Palm Beach, Florida.

For Respondent Robert W. Baird & Co. Incorporated ("Baird"): Martin Q. Ryan, Esq., Mora Baugh Waitzman & Unger, LLC, Chicago, Illinois.

**CASE INFORMATION**

Statement of Claim filed on or about: October 9, 2002.

Claimant signed the Uniform Submission Agreement: October 8, 2002.

Statement of Answer filed by Respondents Gutner and Baird on or about: January 13, 2003.

Statement of Answer filed by Respondents Gutner and UBS on or about: March 3, 2003.

Respondent Baird signed the Uniform Submission Agreement: December 2, 2002.

Respondent Gutner signed the Uniform Submission Agreement: December 9, 2002.

Respondent UBS signed the Uniform Submission Agreement: December 13, 2002.

Amended Statement of Claim filed by Claimant on or about: September 23, 2003.

Response to Amended Statement of Claim filed by Respondents Gutner and UBS on or about: September 26, 2003.

Response to Amended Statement of Claim filed by Respondents Gutner and Baird on or about: October 2, 2003.

### **CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract; breach of fiduciary duty; fraud; violation of Chapter 517 of the Florida Statutes; and violation of Florida securities laws. The causes of action relate to the purchase of unspecified technology and telecommunications stocks in Claimant's individual retirement account ("IRA") between January 2000 and February 2002 that resulted in investment losses.

Unless specifically admitted in their Answer, Respondents UBS and Gutner denied the allegations set forth in the Statement of Claim, and affirmatively alleged that Claimant executed documents confirming that Claimant desired to invest in equities with an investment objective of growth, and that Claimant's account was handled in accordance with Claimant's stated investment objectives.

Unless specifically admitted in their Answer, Respondents Baird and Gutner denied the allegations and claims set forth in the Statement of Claim, and affirmatively asserted that Claimant was an experienced and wealthy investor, and that the investments were suitable and consistent with Claimant's stated investment objectives.

### **RELIEF REQUESTED**

Claimant requested compensatory damages, interest, attorneys' fees, and other costs.

Respondents requested that the claims asserted be denied and dismissed in their entirety.

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

Based upon the stipulation of the parties during the pre-hearing telephonic conference conducted with the undersigned arbitrator (the "Arbitrator") on September 19, 2003, the Arbitrator issued an Order granting leave to Claimant to file an amendment to the Statement of Claim.

On or about January 29, 2004, the parties filed with NASD Dispute Resolution a notice of settlement.

On or about February 3, 2004, the parties filed with NASD Dispute Resolution a proposed Stipulation and Notice of Dismissal for review and approval by the Arbitrator. In their proposed Stipulation and Notice of Dismissal, the parties stated that all claims asserted against Respondent Gutner were dismissed with prejudice, and requested that the Arbitrator enter an order and/or award expunging any references to this case and matter from the NASD Central Registration Depository ("CRD") record of Respondent Gutner.

The parties requested and the Panel agreed that the Stipulated Award in this matter shall be executed by the Arbitrator in lieu of the entire Panel.

### **AWARD**

After considering the pleadings and the proposed Stipulation and Notice of Dismissal submitted by the parties, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims against Respondents are dismissed with prejudice.
2. The Arbitrator recommends that all references to the above-captioned arbitration be expunged from Respondent Gutner's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Gutner must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. All parties shall bear their respective costs, including attorneys' fees.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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 firms that employed the associated persons at the time of the event(s) giving rise to the dispute. Accordingly, UBS and Baird are member firms and parties.

Respondent UBS' Member surcharge	= \$1,700.00
Respondent UBS' Pre-hearing process fee	= \$ 750.00
<u>Respondent UBS' Hearing process fee</u>	<u>= \$2,750.00</u>
Total Member Fees for Respondent UBS	= \$5,200.00

Respondent Baird's Member surcharge	= \$1,700.00
Respondent Baird's Pre-hearing process fee	= \$ 750.00
<u>Respondent Baird's Hearing process fee</u>	<u>= \$2,750.00</u>
Total Member Fees for Respondent Baird	= \$5,200.00

#### **Adjournment Fees**

No adjournments were requested in this matter.

#### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

Injunctive relief fees were not assessed in this matter.

**Forum Fees and Assessments**

The Arbitrator has assessed forum fees for each session conducted. A 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 the Panel @ \$1,125.00/session	= \$1,125.00
Pre-hearing conference: July 14, 2003 1 session	

One (1) Pre-hearing session with the Arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: September 19, 2003 1 session	

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Total Forum Fees	= \$1,575.00
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Pursuant to the agreement of the parties, the Arbitrator has assessed forum fees as follows: \$787.50 to Claimant; \$393.75 to Respondent UBS; and \$393.75 to Respondent Baird.

**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.

There were no administrative costs incurred in this matter.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 787.50
Total Fees	= \$1,087.50
Less Payments	= \$1,087.50
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent UBS is solely liable for:

Member Fees	= \$5,200.00
Forum Fees	= \$ 393.75
Total Fees	= \$5,593.75
Less Payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 393.75

Respondent Baird is solely liable for:

Member Fees	= \$5,200.00
Forum Fees	= \$ 393.75
Total Fees	= \$5,593.75
Less Payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 393.75

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

**ARBITRATOR**

James R. Kennedy, Jr.

Public Arbitrator

**Arbitrator's Signature**

/s/  
James R. Kennedy, Jr.

February 11, 2004  
Signature Date

February 12, 2004  
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution

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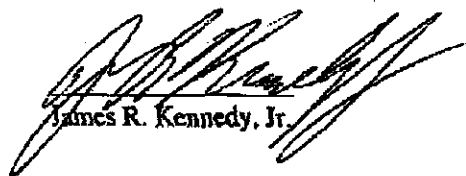
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All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATOR**

James R. Kennedy, Jr.

Public Arbitrator

**Arbitrator's Signature**  
James R. Kennedy, Jr.2-11-04  
Signature Date

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