
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Anna Wenk, individually and Peter J. Wenk,
attorney-in-fact for Anna Wenk under
DPOA dtd 10/3/02

Case Number: 02-06539

Names of the Respondents

UBS PaineWebber Incorporated
C. Schiller Martin

Hearing Site: Tampa, Florida

REPRESENTATION OF PARTIES

For Anna Wenk, individually and Peter J. Wenk, attorney-in-fact for Anna Wenk under DPOA dtd 10/3/02, hereinafter collectively referred to as "Claimant": Allan J. Fedor, Esq., Law Offices of Fedor & Fedor, Largo, Florida.

For UBS PaineWebber Incorporated ("UBS") and C. Schiller Martin ("Martin"), hereinafter collectively referred to as "Respondents": Beverly Jo Slaughter, Esq. and Keith Olin, Esq., Morgan Lewis & Bockius, LLP, Miami, Florida.

CASE INFORMATION

Statement of Claim filed on or about: October 26, 2002.

Claimant signed the Uniform Submission Agreement: October 3, 2002.

Statement of Answer filed by Respondents on or about: January 22, 2003.

Respondent UBS signed the Uniform Submission Agreement: December 23, 2002.

Respondent Martin did not file an executed Uniform Submission Agreement.

Affidavit of Costs and Expenses for Allan J. Fedor, Esq. filed on or about: August 18, 2003.

Proposed Order for Sanctions filed by Claimant on or about: June 20, 2003.

Response to Proposed Order for Sanctions filed by Respondents on or about: June 23, 2003.

Motion for Sanctions filed by Claimant on or about: July 3, 2003.

Response to Motion for Sanctions filed by Respondents on or about: June 23, 2003.

Claimant's Motions to Compel Discovery and for Sanctions filed on or about: August 21, 2003.

Respondents' Opposition to Claimant's Motion for Sanctions filed on or about: September 8, 2003.

CASE SUMMARY

Claimant asserted the following causes of action against Respondents: negligence; mismanagement of Claimant's investment funds in connection with the rendering of investment advice; over concentration; unsuitability; failure to give investment advice regarding over concentration; failure to recommend

diversification; falsification of account return objectives and risk profile; engagement in fraudulent and deceptive practices and omissions; breach of fiduciary duty; and, violations of Florida Statutes section 517.301. Claimant asserted the following causes of action against Respondent UBS: fraudulent and negligent conduct in allowing its analyst to issue false "buy" and "strong buy" recommendations regarding Enron stock during the period October 18, 2000 through at least November 21, 2001; negligence in failing to properly supervise Respondent Martin in the rendering of investment advice to Claimant; and, respondeat superior. The causes of action relate to the rendering of investment advice regarding Enron stock acquired by Claimant.

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

RELIEF REQUESTED

Claimant requested compensatory damages, including legal interest, in the amount of at least \$187,000.00 but less than \$500,000.00, costs and expenses in the amount of \$1,693.33, reasonable attorneys' fees to be awarded by a court of competent jurisdiction pursuant to Florida Statutes section 517.211(6), the \$1,425.00 filing fee paid to NASD and all forum fees advanced or owed, punitive damages in an amount to be determined by the arbitrators, and such other relief as the arbitration panel deemed just and proper.

Respondents requested a dismissal of the Statement of Claim in its entirety and such other and further relief as the panel deemed just and proper, including the assessment of all forum fees against Claimant. Respondent UBS reserved its right and notified Claimant of its intent to seek, under sections 57.105 and 517.211(6) of the Florida Statutes, and in a court of competent jurisdiction, reimbursement of attorneys' fees and costs incurred in connection with this matter.

OTHER ISSUES DECIDED

Respondent Martin did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

On June 20, 2003, Claimant submitted a proposed order for sanctions against Respondents for their failure to comply with the Panel's document production orders of April 30, 2003 and May 15, 2003, respectively. On June 23, 2003, Respondents submitted a response to Claimant's June 20, 2003 correspondence, requesting that Claimant's claim for sanctions be denied on the ground that Claimant's request does not provide any basis for the imposition of sanctions. On June 24, 2003, the Panel issued an order that permitted Claimant to submit a motion for sanctions on or before July 8, 2003, and Respondents to reply to said motion on or before July 22, 2003. On July 3, 2003, Claimant filed a Motion for Sanctions against Respondents. Respondents' counsel informed NASD Dispute Resolution that Respondents' June 23, 2003 response to Claimant's June 20, 2003 correspondence should be deemed Respondents' response to said motion.

On August 4, 2003, the Panel issued an order as follows: (1) Claimant's motion for sanctions would be addressed at an appropriate time during the course of the hearing; (2) Claimant was directed to enlarge upon the allegations in Claimant's motion papers regarding the claimed non-compliance with the April 30 and May 15,

2003 orders for the benefit of the arbitrators who were not involved in the discovery process; (3) Respondents were directed to file an updated response to Claimant's motion; and (4) the aforesaid documents were to be made available to the Panel no later than the commencement of the hearing. During the pendency of the hearing, the Panel ruled that an additional hearing would be conducted to address Claimant's motion for sanctions. A telephonic conference was conducted on September 10, 2003 to address the aforesaid motion and on September 10, 2003, the Panel issued an order imposing sanctions on Respondents in the amount of \$3,500.00 to be paid within thirty days of the date of the order.

The parties agreed that the Award in this matter may be executed in counterpart copies.

AWARD

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

Claimant's claims are dismissed with prejudice.

Respondents are liable, jointly and severally, and shall pay to Claimant the sum of \$1,693.33 representing costs and expenses incurred by Claimant in this matter and \$300.00 representing the claim filing fee previously paid by Claimant to NASD Dispute Resolution.

Respondents are liable, jointly and severally, and shall pay to Claimant, not later than October 10, 2003, sanctions in the sum of \$3,500.00.

Any and all claims for relief not specifically addressed herein, including Claimant's claim for relief pursuant to Florida Statutes section 517.301 and Claimant's request for punitive damages, are 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
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Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, UBS is a party and the following fees are assessed:

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

Adjournment Fees

Adjournment fees were not assessed 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 Panel 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	= \$1,125.00
Pre-hearing conference: March 24, 2003 1 session	
Four (4) Pre-hearing sessions with a single arbitrator @ \$450.00/session	= \$1,800.00
Pre-hearing conferences: April 30, 2003 1 session	
May 15, 2003 1 session	
June 20, 2003 1 session	
July 11, 2003 1 session	
Four (4) Hearing sessions with the Panel @ \$1,125.00/session	= \$4,500.00
Hearing dates: August 18, 2003 2 sessions	
August 19, 2003 2 sessions	
One (1) Post-hearing session with the Panel @ \$1,125.00	= \$1,125.00
Post-hearing conference: September 10, 2003 1 session	
<hr/> Total Forum Fees	<hr/> = \$8,550.00

The Panel has assessed the total forum fees of \$8,550.00 to Respondents, jointly and severally.

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:

<u>Initial Filing Fee</u>	= \$ 300.00
<u>Total Fees</u>	= \$ 300.00
<u>Less payments</u>	= \$ 300.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondent UBS is solely liable for:

<u>Member Fees</u>	= \$ 5,200.00
<u>Total Fees</u>	= \$ 5,200.00
<u>Less payments</u>	= \$ 5,200.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 8,550.00
<u>Total Fees</u>	= \$ 8,550.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 8,550.00

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

ARBITRATION PANEL

Howard J. Adler, Esq.	-	Public Arbitrator, Presiding Chairperson
Richard E. Shute	-	Public Arbitrator
Gordon E. Hippner	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/S/
Howard J. Adler, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

/S/
Richard E. Shute
Public Arbitrator

Signature Date

/S/
Gordon E. Hippner
Non-Public Arbitrator

Signature Date

September 26, 2003

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

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Concurring Arbitrators' Signatures

Howard J. Adler, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Richard E. Shute
Public Arbitrator

Richard E. Shute 9/11/03

Signature Date

Gordon E. Hippner
Non-Public Arbitrator

Signature Date

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Richard E. Shute	-	Public Arbitrator
Gordon E. Hippner	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Howard J. Adler, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Richard E. Shute
Public Arbitrator

Signature Date


Gordon E. Hippner
Non-Public Arbitrator

Sept. 19, 2003
Signature Date

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