

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Names of Claimants

Kamil H. Sweidan (a/k/a Kamil Sweidan),  
individually and as Trustee of the  
Kamil Sweidan Trust

and

Case Number: 02-06869  
Hearing Site: Troy, Michigan

Names of Respondents

UBS Financial Services, Inc.  
and Joseph Majdalani

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**NATURE OF DISPUTE**

Customers v. Member and Associated Person

**REPRESENTATION OF PARTIES**

Claimants, Kamil H. Sweidan (a/k/a Kamil Sweidan), individually and as Trustee of the Kamil Sweidan Trust, hereinafter referred to as "Claimants," were represented by Joseph H. Pilkington, Esq., Joseph H. Pilkington & Co., P.C., Toledo, Ohio.

Respondents, UBS Financial Services, Inc. ("UBS") and Joseph Majdalani ("Majdalani"), hereinafter referred to as "Respondents," were represented by Vincent J. Oliva, Esq., UBS Financial Services, Inc., Weehawken, New Jersey.

**CASE INFORMATION**

The Statement of Claim was filed on or about November 13, 2002. The Submission Agreement of Claimants Kamil H. Sweidan (a/k/a Kamil Sweidan), individually and as Trustee of the Kamil Sweidan Trust, was signed on or about October 4, 2002.

The Statement of Answer was filed by Respondents, UBS and Majdalani, on or about November 5, 2003. The Submission Agreement of Respondent UBS Financial Services, Inc. was signed on or about November 3, 2003, by Vincent J. Oliva, Corporate Vice President and Associate General Counsel.

### **CASE SUMMARY**

Claimants asserted causes of action including the following: failure to properly execute orders and administer and supervise the accounts, breach of contract, and breach of fiduciary duty. The causes of action related to Claimants' allegations that Respondent Majdalani failed to sell shares of securities including Munder Net Net Fund, Enron, and Qwest. Claimants also alleged that Respondent Majdalani mistakenly purchased EMC stock and instead of correcting the transaction, told Claimants that he would sell the EMC stock at cost or better at the appropriate time. Claimants asserted that they were damaged by Respondents' conduct.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim is barred by the doctrine of ratification; Claimants' causes of action are barred by the doctrines of laches, waiver, and estoppel; Claimants' alleged losses were not proximately caused by any action or inaction of Respondents; Claimants had the opportunity and means to mitigate their purported damages, but failed to do so; and Claimants did not reasonably rely to their detriment upon any representation or action of Respondents.

### **RELIEF REQUESTED**

Claimants requested an award of \$376,650.00 in damages, plus attorney fees, costs, and such other relief as is reasonable and just.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. At hearing, Respondent Majdalani requested that all references to this matter be expunged from his CRD record.

### **OTHER ISSUES CONSIDERED & DECIDED**

Respondent Joseph Majdalani did not file with the NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, and appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

On or about May 25, 2004, pursuant to Rule 10308 of the NASD Code of Arbitration Procedure, Arbitrator Brace K. Case, Esq. was reclassified from a non-public to a public arbitrator. The parties accepted the composition of the Panel.

After the conclusion of Claimants' case in chief, Respondents moved for dismissal. The panel denied the motion on the record.

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

### **AWARD**

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

- 1.) Claimants' claims, each and all, are denied and dismissed with prejudice;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 3.) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent Joseph Majdalani's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Joseph Majdalani must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive; and
- 4.) Any relief not specifically enumerated, including punitive damages and attorney fees, is hereby denied with prejudice.

### **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. In this matter, the member firm is UBS Financial Services, Inc.

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

### **Adjournment Fees**

Adjournments requested during these proceedings:

May 25, 26, 28, 2004 adjournment requested by Claimants	= \$ 1,125.00
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### **Forum Fees and Assessments**

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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 Panel x \$1,125.00	= \$ 1,125.00
Pre-hearing conference: November 3, 2003 1 session	

Six (6) Hearing sessions x \$1,125.00	= \$ 6,750.00
Hearing Dates:	
August 3, 2004	2 sessions
August 4, 2004	2 sessions
August 5, 2004	2 sessions

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Total Forum Fees	= \$ 7,875.00
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The Arbitration Panel has assessed \$3,937.50 of the forum fees jointly and severally to Kamil H. Sweidan (a/k/a Kamil Sweidan), individually and as Trustee of the Kamil Sweidan Trust.

The Arbitration Panel has assessed \$3,937.50 of the forum fees jointly and severally to UBS Financial Services, Inc. and Joseph Majdalani.

### **FEE SUMMARY**

Claimants, Kamil H. Sweidan (a/k/a Kamil Sweidan), individually and as Trustee of the Kamil Sweidan Trust, are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$ 1,125.00
Forum Fees	= \$ 3,937.50
Total Fees	= \$ 5,362.50
Less payments	= \$ 2,550.00
Balance Due NASD Dispute Resolution	= \$ 2,812.50

Respondent, UBS Financial Services, Inc., is liable for:

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

Respondents, UBS Financial Services, Inc., and Joseph Majdalani, are jointly and severally liable for:

Forum Fees	= \$ 3,937.50
Total Fees	= \$ 3,937.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 3,937.50

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

**ARBITRATION PANEL**

Roland L. Olzark, J.D. - Public Arbitrator, Presiding Chair

Harvey Frank - Public Arbitrator

Brace K. Case., Esq. - Public Arbitrator

Concurring Arbitrators:

/s/ Roland L. Olzark, J.D.

Roland L. Olzark, J.D.  
Public Arbitrator, Presiding Chair

08/05/04

Signature Date

/s/ Harvey Frank

Harvey Frank  
Public Arbitrator

08/05/04

Signature Date

/s/ Brace K. Case, Esq.

Brace K. Case., Esq.  
Public Arbitrator

08/05/04

Signature Date

08/05/04

Date of Service (For NASD office use only)

NASD Dispute Resolution  
Arbitration No. 02-08889  
Award Page 5 of 5

Respondent, UBS Financial Services, Inc., is liable for:

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

Respondents, UBS Financial Services, Inc., and Joseph Majdalani, are jointly and severally liable for:


Forum Fees	= \$ 3,937.50
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**ARBITRATION PANEL**

Roland L. Olzark, J.D. - Public Arbitrator, Presiding Chair  
Harvey Frank - Public Arbitrator  
Brace K. Case., Esq. - Public Arbitrator

Concurring Arbitrators:

  
\_\_\_\_\_  
Roland L. Olzark, J.D.  
Public Arbitrator, Presiding Chair

  
\_\_\_\_\_  
Signature Date

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Harvey Frank  
Public Arbitrator

\_\_\_\_\_  
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Brace K. Case., Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

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NASD Dispute Resolution  
Arbitration No. 02-06869  
Award Page 5 of 8

Respondent, UBS Financial Services, Inc., is liable for:

Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00
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Harvey Frank - Public Arbitrator  
Brace K. Case., Esq. - Public Arbitrator

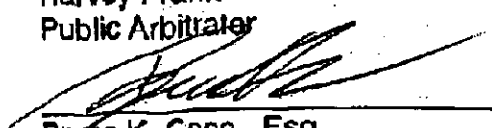
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Public Arbitrator, Presiding Chair

\_\_\_\_\_  
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Public Arbitrator

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NASD Dispute Resolution  
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Award Page 5 of 5

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Concurring Arbitrators:

Roland L. Olzark, J.D.  
Public Arbitrator, Presiding Chair

Signature Date

Harvey Frank  
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Public Arbitrator

8/5/04  
Signature Date

Brace K. Case., Esq.  
Public Arbitrator

Signature Date

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