

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

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In the Matter of the Arbitration Between

Name of Claimant

Robert Potocki

and

Case Number: 02-06984  
Hearing Site: Southfield, Michigan

Names of Respondents

UBS Financial Services, Inc.,  
f/k/a UBS PaineWebber and  
Ann Maile

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**NATURE OF CASE**

Customer v. Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

Robert Potocki ("Claimant") was represented by Joel H. Kaufman, Esq., Farmington Hills, Michigan.

UBS Financial Services, Inc., f/k/a UBS PaineWebber ("UBS") and Ann Maile ("Maile") were represented by Heather A. Wright, Esq., UBS PaineWebber, Inc., New York, New York.

**CASE INFORMATION**

The Statement of Claim was filed on or about November 19, 2002. The Submission Agreement of Claimant Robert Potocki was signed on or about November 6, 2002.

Statement of Answer was filed jointly by Respondent UBS Financial Services, Inc., f/k/a UBS PaineWebber and Ann Maile on or about January 13, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: unsuitability/violation of NASD rules, breach of contract, negligence/misrepresentation, violation of the Michigan Consumer Protection Act, breach of fiduciary duty, violations of federal and state securities laws, fraud, and common law fraud. The causes of action relate to the purchase and sale of K-Mart preferred stock.

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 fails to state a claim upon which relief may be granted, Claimant's causes of action are barred by the doctrines of ratification, waiver, and estoppel, and the transactions in Claimant's accounts were entirely consistent with his investment objectives.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$22,776.56, plus interest, costs, attorney fees, rescission and additional damages as allowed to the Panel.

Respondents requested that the claims asserted against them be dismissed in their entirety, expungement of the Claim from Respondent Maile's CRD record, and such other relief as is just and equitable.

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

Respondents UBS Financial Services, Inc., f/k/a UBS PaineWebber and Ann Maile did not file with the NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing are bound by the determination of the arbitration panel on all issues submitted.

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 arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Claimant's claims, each and all, are denied and dismissed with prejudice;
- 2.) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent Anne Maile's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Maile must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

- 3.) That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 4.) That 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                      | = \$125.00 |
| Counterclaim filing fee (expungement request) | = \$250.00 |

#### **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., f/k/a UBS PaineWebber.

|                  |            |
|------------------|------------|
| Member surcharge | = \$425.00 |
|------------------|------------|

#### **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 a single arbitrator x \$450.00 | = \$ 450.00 |
| Pre-hearing conference: May 27, 2003 1 session                  |             |

|  |              |
|--|--------------|
| Four (4) Hearing sessions x \$450.00       | = \$1,800.00 |
| Hearing Dates: October 21, 2003 2 sessions |              |
| October 22, 2003 2 sessions                |              |

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|                  |              |
|------------------|--------------|
| Total Forum Fees | = \$2,250.00 |
|------------------|--------------|

The Arbitration Panel has assessed \$750.00 of the forum fees to Robert Potocki.  
The Arbitration Panel has assessed \$750.00 of the forum fees to UBS Financial Services, Inc., f/k/a UBS PaineWebber.  
The Arbitration Panel has assessed \$750.00 of the forum fees to Ann Maile.

**Fee Summary**

Claimant, Robert Potocki, is solely liable for:

|                                     |             |
|-------------------------------------|-------------|
| Initial Filing Fee                  | = \$ 125.00 |
| Forum Fees                          | = \$ 750.00 |
| Total Fees                          | = \$ 875.00 |
| Less payments                       | = \$ 575.00 |
| Balance Due NASD Dispute Resolution | = \$ 300.00 |

Respondent, UBS Financial Services, Inc., f/k/a UBS PaineWebber is solely liable for:

|                                     |              |
|-------------------------------------|--------------|
| Member Fees                         | = \$ 425.00  |
| Forum Fees                          | = \$ 750.00  |
| Total Fees                          | = \$1,175.00 |
| Less payments                       | = \$ 425.00  |
| Balance Due NASD Dispute Resolution | = \$ 750.00  |

Respondent, Ann Maile is solely liable for:

|                                     |              |
|-------------------------------------|--------------|
| Counterclaim Filing Fee             | = \$ 250.00  |
| Forum Fees                          | = \$ 750.00  |
| Total Fees                          | = \$1,000.00 |
| Less payments                       | = \$ 0.00    |
| Balance Due NASD Dispute Resolution | = \$1,000.00 |

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

**ARBITRATOR**

Terrance J. Dorcy - Public Arbitrator, Presiding Chair

Arbitrator's Signature:

/s/ Terrance J. Dorcy  
Terrance J. Dorcy  
Public Arbitrator, Presiding Chair  
Non-Public Arbitrator

11/19/03  
Signature Date

11/19/03  
Date of Service (For NASD office use only)

NASD Dispute Resolution  
Arbitration No. 02-06984  
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| Total Fees                          | = \$ 875.00 |
| Less payments                       | = \$ 575.00 |
| Balance Due NASD Dispute Resolution | = \$ 300.00 |

Respondent, UBS Financial Services, Inc., f/k/a UBS PaineWebber is solely liable for:

|                                     |              |
|-------------------------------------|--------------|
| Member Fees                         | = \$ 425.00  |
| Forum Fees                          | = \$ 750.00  |
| Total Fees                          | = \$1,175.00 |
| Less payments                       | = \$ 425.00  |
| Balance Due NASD Dispute Resolution | = \$ 750.00  |

Respondent, Ann Maile is solely liable for:

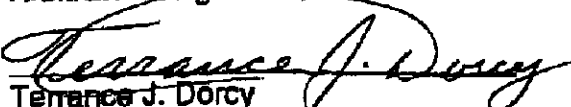
|                                     |              |
|-------------------------------------|--------------|
| Counterclaim Filing Fee             | = \$ 250.00  |
| Forum Fees                          | = \$ 750.00  |
| Total Fees                          | = \$1,000.00 |
| Less payments                       | = \$ 0.00    |
| Balance Due NASD Dispute Resolution | = \$1,000.00 |

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

### ARBITRATOR

Terrance J. Dorcy - Public Arbitrator, Presiding Chair

Arbitrator's Signature:

  
Terrance J. Dorcy  
Public Arbitrator, Presiding Chair  
Non-Public Arbitrator

  
Signature Date

Date of Service (For NASD office use only)