

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 02-07042

Lawrence and Ruth G. Martinez

Names of the Respondents

Hearing Site: Charlotte, North Carolina

UBS Financial Services, Inc.
Michael Gomberg

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

REPRESENTATION OF PARTIES

Claimants, Lawrence and Ruth G. Martinez, hereinafter collectively referred to as "Claimants", were represented by Darren C. Blum, Esq., Law Offices of Darren C. Blum, P.A., Plantation, Florida.

Respondent, UBS Financial Services, Inc. ("UBS"), was represented by Matthew N. Thibaut, Esq., Boose, Casey, Ciklin, Lubitz, Martens, McBane & O'Connell, P.A., West Palm Beach, Florida.

Respondent, Michael Gomberg ("Gomberg"), was represented by Garry W. O'Donnell, Esq., Adorno & Yoss, P.A., Boca Raton, Florida.

CASE INFORMATION

Statement of Claim filed on November 20, 2002.

Claimants signed the Uniform Submission Agreement on June 28, 2002.

Statement of Answer filed by Respondent UBS on March 4, 2003.

A representative of Respondent UBS executed the Uniform Submission Agreement on December 23, 2002.

Statement of Answer filed by Respondent Gomberg on April 3, 2003.

Respondent Gomberg filed a signed, undated Uniform Submission Agreement.

Respondent Gomberg filed a Motion to Reopen on July 15, 2004.

Claimant file letter of no opposition to the Motion to Reopen on September 9, 2004.

CASE SUMMARY

Claimants asserted the following causes of action, among others: breach of contract, breach of fiduciary duty, common law fraud, negligence, and negligent supervision. The causes of action relate to the purchase and sale of various securities.

Unless specifically admitted in his Answer, Respondent Gomberg denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to state a claim upon which relief may be granted, contributory negligence, laches, ratification, waiver, estoppel, assumption of risk, failure to mitigate, statute of limitations, claims are barred by NASD Code of Arbitration Procedure Rule 10304, and claims are barred by Florida's Economic Loss Doctrine.

Unless specifically admitted in its Answer, Respondent UBS denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to state a claim upon which relief may be granted, contributory negligence, laches, ratification, waiver, estoppel, assumption of risk, failure to mitigate, statute of limitations, and claims are barred by NASD Code of Arbitration Procedure Rule 10304.

RELIEF REQUESTED

Claimants in their Statement of Claim requested:

Compensatory Damages	\$433,463.00
Punitive Damages	amount unspecified
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondent UBS in its Statement of Answer requested that the claim be dismissed.

Respondent Gomberg in his Statement of Answer requested that the claim be dismissed.

OTHER ISSUES CONSIDERED AND DECIDED

Prior to the hearing, the parties fully and finally settled all claims by and between them. On February 12, 2004, NASD Dispute Resolution removed this matter from its docket as a result of the parties' settlement. The Panel granted Respondent Gomberg's request to reopen the case to consider a Stipulated Award recommending the expungement of this matter from Respondent Gomberg's NASD Central Registration Depository's record. Therefore, the parties submitted this Stipulated Award to the Panel for its consideration and request that it be entered.

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

AWARD

Pursuant to the above, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Gomberg's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Gomberg must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
2. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and
3. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

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 firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Respondent UBS is a party.

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

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the 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 @ \$1,125.00	= \$1,125.00
Pre-hearing conference: June 30, 2003 1 session	
Total Forum Fees	= \$1,125.00

1. The Panel has assessed \$562.50 of the forum fees to Claimant.
2. The Panel has assessed \$562.50 of the forum fees jointly and severally to Respondents.

FEE SUMMARY

1. Claimants are jointly and severally assessed and shall pay the following fees:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 562.50
Total Fees	= \$ 862.50
<u>Less payments</u>	= \$1,450.00
Refund Paid to Claimants	= \$ 587.50

2. Respondent UBS is assessed and shall pay the following fees:

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

3. Respondents are jointly and severally assessed and shall pay the following fees:


<u>Forum Fees</u>	= \$ 562.50
Total Fees	= \$ 562.50
<u>Less payments</u>	= \$ 562.50
Balance Due NASD Dispute Resolution	= \$ 0.00

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

ARBITRATION PANEL

Zeb E. Barnhardt, Jr., Esq.	-	Public Arbitrator, Presiding Chairperson
William H. Malloy, Jr., Esq.	-	Public Arbitrator, Panelist
Robert Shiffra, Esq.	-	Non-Public Arbitrator, Panelist

Concerning Arbitrators' Signatures


Zeb E. Barnhardt, Jr., Esq.
Public Arbitrator, Presiding Chairperson

May 16, 2005
Signature Date

William H. Malloy, Jr., Esq.
Public Arbitrator, Panelist

Signature Date

Robert Shiffra, Esq.
Non-Public Arbitrator, Panelist

Signature Date

May 20, 2005
Date of Service (For NASD Dispute Resolution office use only)


Concurring Arbitrators' Signatures

Zeb E. Barnhardt, Jr., Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

William H. Malloy, Jr., Esq.
Public Arbitrator, Panelist

Signature Date


Robert Shiffra, Esq.
Non-Public Arbitrator, Panelist

5-20-05
Signature Date

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

Arbitration No. 02-07042
Stipulated Award Page 5

Concurring Arbitrators' Signatures

Zeb E. Barnhardt, Jr., Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Robert Shiffra, Esq.
Non-Public Arbitrator, Panelist

Signature Date

Dissenting Arbitrator's Signature

William H. Malloy, Jr., Esq.
Public Arbitrator, Panelist

Feb 18, 2005
Signature Date

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