

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Louise Considine, Claimant v. UBS/PaineWebber, Inc. n/k/a/ UBS Financial Services, Inc.,
Steven V. Arrigo, William R. Spruston, and Lawrence E. Smith, Respondents

Case Number: 02-07505

Hearing Site: Los Angeles, California

Nature of the Dispute: Associated Person v. Member and Associated Persons

REPRESENTATION OF PARTIES

For Claimant Louise Considine:

Geraldine Darrow, Esq.
Kenneth B. Merrill, Esq.
Darrow & Merrill
Long Beach, California

For Respondents UBS Financial Services, Inc.,
Steven V. Arrigo, William R. Spruston and
Lawrence E. Smith:

James A. Goodman, Esq.
Epstein Becker & Green
Los Angeles, California

For Respondent Lawrence E. Smith:

Sandra L. Malek, Esq.
Malek & Malek
Torrance, California

CASE INFORMATION

Statement of Claim filed: December 12, 2002

Claimant's Uniform Submission Agreement signed: November 22, 2002

Joint Statement of Answer filed by Respondents: May 12, 2003

Respondent UBS Financial Services, Inc.'s Uniform Submission Agreement signed:
May 12, 2003

Respondent Steven V. Arrigo's Uniform Submission Agreement signed: May 22, 2003

Respondent William R. Spruston's Uniform Submission Agreement signed: July 22, 2003

Respondent Lawrence E. Smith's Uniform Submission Agreement signed: August 7, 2003

CASE SUMMARY

Claimant's alleged breach of fiduciary duty by a partner, conversion, breach of contract, interference with contractual relations, and sexual discrimination. Claimant's allegations were based on her partnership with Respondent Lawrence E. Smith.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

RELIEF REQUESTED

Claimant requested unspecified compensatory damages, unspecified punitive damages, imposition of a constructive trust and costs, including attorney's fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety and costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

On April 4, 2003, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On May 13, 2003 Respondents' counsel signed a Waiver Agreement on Respondents' behalf expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On May 22, 2003 the parties stipulated to a Panel composed of one public and two non-public arbitrators.

During the hearing, Claimant moved the Panel to accept into evidence Claimant's rebuttal brief to Respondents' Answer to Claimant's Statement of Claim. After due deliberation, the Panel denied the motion.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

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

- 1) Respondents UBS Financial Services, Inc. and William R. Spruston are jointly and severally liable to and shall pay Claimant Louise Considine the sum of \$100,000.00 in compensatory damages.
- 2) Respondents UBS Financial Services, Inc. and William R. Spruston are jointly and severally liable to and shall pay Claimant Louise Considine interest in the amount of 10% per annum on \$100,000 from January 1, 2002, until the date payment of this Award is made in full.
- 3) The Panel finds that Claimant failed to present evidence sufficient to sustain her allegation that Respondents engaged in conduct of sexual discrimination.
- 4) Claimant's request for punitive damages is denied.
- 5) Respondents Steven V. Arrigo and Lawrence E. Smith are dismissed with prejudice.
- 6) The parties shall bear their respective costs, including attorney's fees.
- 7) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 250.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm UBS Financial Services, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 2,200.00</u>
Total Member Fees	= \$ 4,450.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

One (1) Pre-hearing conference session with the Panel @ \$1,000.00/session	= \$ 1,000.00
Pre-hearing conference: September 10, 2003	1 session
Nine (9) Hearing sessions @ \$1,000.00/session	= \$ 9,000.00
Hearings: January 13, 2004	2 sessions
January 14, 2004	2 sessions
January 15, 2004	2 sessions
January 16, 2004	2 sessions
January 23, 2004	1 session
Total Forum Fees	= \$10,000.00

The Panel assessed the entire balance of the forum fees, in the amount of \$10,000.00, to Respondent UBS Financial Services, Inc. pursuant to *Armendariz v. Foundation Health Psychare Services, Inc.* (2000) 24 Cal.4th 83.

Administrative Costs

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

Respondent UBS Financial Services requested copies of
10 tapes @ \$15.00: =\$ 150.00

Respondent UBS Financial Services requested 24
photocopies @ \$.50: =\$ 12.00

Fee Summary

1. Claimant Louise Considine is charged with the following fees and costs:

Initial Filing Fee	= \$ 200.00
<u>Less payments by Claimant Louise Considine</u>	= \$ (200.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Respondent UBS Financial Services, Inc. is charged with the following fees and costs:

Balance of Claimant's Initial Filing Fee pursuant to <i>Armendariz v. Foundation Health Psychare Services, Inc.</i> (2000) 24 Cal.4 th 83	= \$ 50.00
Member Fees	= \$ 4,450.00
Forum Fees	= \$10,000.00
<u>Administrative Costs</u>	<u>= \$ 162.00</u>
Total Fees	= \$14,662.00
Less payments by Sandra L. Malek, Esq.	= \$ (165.00)
<u>Less payments by UBS Financial Services, Inc.</u>	<u>= \$ (5,250.00)</u>
Balance Due NASD Dispute Resolution	= \$ 9,247.00

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

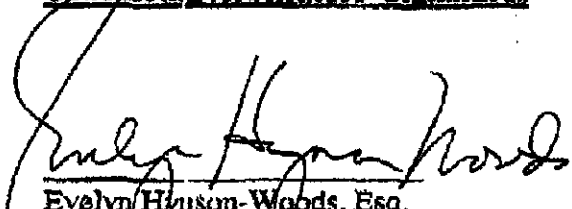
ARBITRATION PANEL

Evelyn Hynson-Woods, Esq.
Milton C. Bennett
Leo B. Rotter

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Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures


Evelyn Hynson-Woods, Esq.
Chair, Public Arbitrator

1/26/04
Signature Date

Milton C. Bennett
Non-Public Arbitrator

Signature Date

Leo B. Rotter
Non-Public Arbitrator

Signature Date

Date of Service

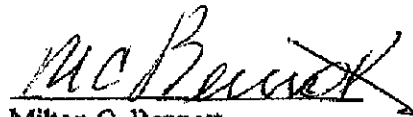
ARBITRATION PANEL

<i>Evelyn Hynson-Woods, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Milton C. Bennett</i>	-	<i>Public Arbitrator</i>
<i>Leo B. Rotter</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

Evelyn Hynson-Woods, Esq.
Chair, Public Arbitrator

Signature Date



Milton C. Bennett
Non-Public Arbitrator

1-28-04
Signature Date

Leo B. Rotter
Non-Public Arbitrator

Signature Date

Date of Service

ARBITRATION PANEL

Evelyn Hynson-Woods, Esq.
Milton C. Bennett
Leo B. Rotter

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Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

Evelyn Hynson-Woods, Esq.
Chair, Public Arbitrator

Signature Date

Milton C. Bennett
Non-Public Arbitrator

Signature Date


Leo B. Rotter
Non-Public Arbitrator

1-28-04
Signature Date

Date of Service