

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Jennifer H. Lobo (Claimant) v. UBS Financial Services, Inc. f/k/a UBS PaineWebber, Inc., Jim Barilla, and Drew Dusebout (Respondents)

Case Number: 02-07777

Hearing Site: New York, New York

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Nature of the Dispute: Customer vs. Member and Associated Persons.

**REPRESENTATION OF PARTIES**

Claimant Jennifer H. Lobo ("Lobo") hereinafter referred to as "Claimant": Mark S. Cohen, Esq., Cohen and Gresser, New York, NY. Previously represented by: Jacob Aschkenasy, Esq., Meyers Tersigni Feldman & Gray, LLP, New York, NY, and previously *pro se*.

Respondents UBS Financial Services, Inc. f/k/a UBS PaineWebber, Inc. ("UBS"), Jim Barilla ("Barilla"), and Drew Dusebout ("Dusebout") hereinafter collectively referred to as "Respondents": Jonathan L. Hochman, Esq., Schindler Cohen & Hochman, LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: December 21, 2002.

Claimant signed the Uniform Submission Agreement: December 19, 2002.

Joint Statement of Answer filed by Respondents on or about: February 19, 2003.

Respondent UBS signed the Uniform Submission Agreement: February 18, 2003.

Respondent Barilla signed the Uniform Submission Agreement: February 18, 2003.

Respondent Dusebout signed the Uniform Submission Agreement: February 18, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: negligence; carelessness; failure to execute; inadequate supervision; and inadequate account monitoring. The causes of action relate to shares of Orchid BioSystems (ORCH).

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

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$482,135.20; costs in the amount of \$20,000.00, including attorneys' and arbitration costs; and interest in the amount of \$15,665.00.

Respondents requested dismissal of this proceeding; costs and disbursements; expungement of this claim from the CRD records of Respondents Barilla and Dusebout; and such other and further relief as is just.

### **OTHER ISSUES CONSIDERED AND DECIDED**

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.

### **AWARD**

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

1. Respondents are jointly and severally liable for and shall pay to Claimant compensatory damages in the amount of \$196,603.00.
2. Respondents are jointly and severally liable and shall pay to Claimant interest in the amount of \$6,144.00, calculated at 7.5% from January 23, 2002 through June 23, 2002.
3. Any and all relief not specifically addressed herein is 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

#### **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 persons at the time of the events giving rise to the dispute. Accordingly, UBS Financial Services, Inc. f/k/a UBS PaineWebber, Inc. is a party.

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

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

June 7-9, 2004, adjournment by Claimant

= Waived

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00 = \$ 450.00  
Pre-hearing conference: March 8, 2004 1 session

Three (3) Pre-hearing sessions with Panel @ \$1,125.00 = \$ 3,375.00  
Pre-hearing conferences: November 4, 2003 1 session  
February 5, 2004 1 session  
August 17, 2004 1 session

Six (6) Hearing sessions @ \$1,125.00 = \$ 6,750.00  
Hearing Dates: April 19, 2005 2 sessions  
April 20, 2005 2 sessions  
April 21, 2005 2 sessions

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Total Forum Fees = \$10,575.00

1. The Panel has assessed \$5,287.50 of the forum fees against Claimant.
2. The Panel has assessed \$5,287.50 of the forum fees jointly and severally against Respondents.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$5,287.50
Total Fees	= \$5,587.50
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$4,162.50

2. Respondent UBS is solely liable for:

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

3. Respondents are jointly and severally liable for:

Forum Fees	= \$5,287.50
Total Fees	= \$5,287.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$5,287.50

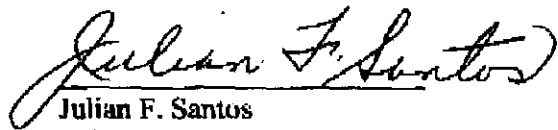
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Julian F. Santos	-	Public Arbitrator, Presiding Chairperson
Sanford S. Stevens, Esq.	-	Public Arbitrator
Alan S. Braunshweiger	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
Julian F. Santos  
Public Arbitrator, Presiding Chairperson

6/1/05  
Signature Date

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Sanford S. Stevens, Esq.  
Public Arbitrator

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Signature Date

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Alan S. Braunshweiger  
Non-Public Arbitrator

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Signature Date

June 2, 2005  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

Julian F. Santos	-	Public Arbitrator, Presiding Chairperson
Sanford S. Stevens, Esq.	-	Public Arbitrator
Alan S. Braunshweiger	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

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Julian F. Santos  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Sanford S. Stevens, Esq.  
Public Arbitrator

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

Alan S. Braunshweiger  
Alan S. Braunshweiger  
Non-Public Arbitrator

June 1 2005  
Signature Date

June 2, 2005  
Date of Service (For NASD Dispute Resolution use only)