

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

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In the Matter of the Arbitration Between

Names of Claimants

Jim and Susan Alexander

and

Case Number: 03-00099  
Hearing Site: Houston, Texas

Names of Respondents

UBS Financial Services, Inc., and  
UBS Warburg, LLC

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**NATURE OF DISPUTE**

Customers v. Member Firms

**REPRESENTATION OF PARTIES**

Jim and Susan Alexander ("**Claimants**") were represented by Joseph J. Hroch, Esq., Spencer & Associates, PC, Houston, Texas.

UBS Financial Services, Inc. ("**UBS Financial**") and UBS Warburg, LLC ("**Warburg**"), hereinafter collectively referred to as "Respondents," were represented by Rodney Acker, Esq., Jenkins & Gilchrist, Dallas, Texas and Robert J. Giuffra, Jr., Esq., Sullivan & Cromwell, LLP, New York, New York.

**CASE INFORMATION**

The Statement of Claim was filed on or about January 6, 2003. On or about November 4, 2003, Claimants filed the First Amended Statement of Claim. On or about March 4, 2004, Claimants filed the Second Amended Statement of Claim. The Submission Agreement of Claimant, Susan Alexander, was signed on or about October 18, 2002. The Submission Agreement of Claimant, Jim Alexander, was signed on or about October 24, 2002.

The Joint Statement of Answer and Motion to Dismiss was filed by Respondents, UBS Financial Services, Inc. and UBS Warburg, LLC, on or about April 2, 2003.

**CASE SUMMARY**

Claimants asserted the following causes of action: fraud, failure to supervise, violation of state and federal securities laws, breach of fiduciary duty, breach of good faith and fail

dealing, violation of the Texas Deceptive Trade Practice Act, negligence and gross negligence. The causes of action related to the recommendation not to exercise options on, and not to sell Enron stock. Claimants alleged that Respondents knowingly failed to inform Claimants of the relationship between Respondents and Enron. Claimants alleged that they were misled and relied on Respondents' seemingly independent financial advice when Respondents counseled them with respect to their stock options and other Enron investments. Further, Claimants alleged that Respondents put their financial interest above those of the Claimants by failing to disclose that their own financial advisors and brokers should have known or had reason to believe that the demise of Enron was eminent

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimants failed to state a claim upon which relief can be granted; any loss incurred by Claimants was, in whole or in part, caused by acts of third parties or by conditions and events outside the control of Respondents; Claimants are barred from recovery by the doctrines of waiver, estoppel, ratification and/or laches; Claimants' claims are barred by their failure to mitigate their damages; Claimants are barred from recovery because Respondents maintained a reasonable system of supervision and control over its registered representatives, and other employees, and because Respondents properly supervised the accounts at issue; and Claimants' claims are barred, in whole or in part, by comparative and/or contributory negligence, or the doctrine of assumption of the risk.

#### **RELIEF REQUESTED**

Claimants requested an award in the amount of:

Actual/Compensatory Damages	Unspecified
Punitive/Exemplary Damages	Unspecified
Attorneys' Fees	Unspecified
Interest	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

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

Respondents UBS Financial Services, Inc. and UBS Warburg, LLC, 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 is bound by the determination of the arbitration panel on all issues submitted.

On or about March 17, 2004, the Panel granted Respondents' Motion to Sever and denied Respondents' Motion to Dismiss. The Claimants that remained in this case were Jim and Susan Alexander. The following Claimants were severed into separate arbitrations: John Allario, Louis Bonasso, Ken Burroughs, Carol Clark, Randy Ernst, Patricia Granger, Lorell Hatcock, Ron Holtz, Wan-Hsiang Hung, Rhett Jackson, Neena Kirsch, David Lamb, Lonnie Liu, Austin Laine Powell, Patricia Gonzalez-Powell, Abe Reed, Daniel Rohret, Francis Schuette, Ram Shaffer, Dennis Sherren, Linda Strahm, Jeane Taylor, Mike Teal, Andy Trevino, James Vahalik, Robert Venorder, Jim Williams, and Joan Amero.

On or about May 27, 2004, the Panel denied Claimants' Motion for Reconsideration of the Decision to Sever the Case.

At the close of the Claimants' case at the final hearing, the Respondents renewed their Motion to Dismiss and moved for a Directed Verdict. The Panel granted Respondents' Motion and dismissed Claimants' claims.

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 hereby 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; and
- 3.) 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 = \$ 250.00

### **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 persons at the time of the events giving rise to the dispute. In this matter, the member firms are UBS Financial Services, Inc. and UBS Warburg, LLC.

Member surcharge = \$ 1,500.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 2,200.00

### **Adjournment Fees**

Adjournments granted during these proceedings:

November 1-3, 2004, adjournment requested by Claimants = \$ 1,000.00

### **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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with a single arbitrator x \$450.00 = \$ 900.00

Pre-hearing conferences: April 14, 2004 1 session  
April 28, 2005 1 session

Five (5) Pre-hearing sessions with Panel x \$1,000.00 = \$ 5,000.00

Pre-hearing conferences: September 4, 2003 1 session  
March 16, 2004 2 sessions  
September 20, 2004 1 session  
April 12, 2005 1 session

Fifteen (15) Hearing sessions x \$1,000.00 = \$ 15,000.00

Hearing Dates: September 19, 2003 1 session  
May 2, 2005 2 sessions  
May 3, 2005 2 sessions

May 4, 2005	2 sessions	
May 5, 2005	2 sessions	
May 6, 2005	2 sessions	
May 9, 2005	2 sessions	
May 10, 2005	2 sessions	
Total Forum Fees		= \$ 20,900.00

The Arbitration Panel has assessed \$10,450.00 of the forum fees jointly and severally to Jim and Susan Alexander.

The Arbitration Panel has assessed \$10,450.00 of the forum fees jointly and severally to UBS Financial Services, Inc. and UBS Warburg, LLC.

#### Fee Summary

Claimants, Jim and Susan Alexander, are jointly and severally liable for:

Initial Filing Fee	= \$ 250.00
Adjournment Fee	= \$ 1,000.00
Forum Fees	= \$ 10,450.00
Total Fees	= \$ 11,700.00
Less payments	= \$ 1,800.00
Balance Due NASD Dispute Resolution	= \$ 9,900.00

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

Member Fees	= \$ 4,450.00
Total Fees	= \$ 4,450.00
Less payments	= \$ 4,450.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent, UBS Warburg, LLC, is liable for:

Member Fees	= \$ 4,450.00
Total Fees	= \$ 4,450.00
Less payments	= \$ 2,250.00
Balance Due NASD Dispute Resolution	= \$ 2,200.00

Respondents, UBS Financial Services, Inc. and UBS Warburg, LLC, are jointly and severally liable for:

Forum Fees	= \$ 10,450.00
Total Fees	= \$ 10,450.00
Less payments	= \$ 2,200.00
Balance Due NASD Dispute Resolution	= \$ 8,250.00

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

**ARBITRATION PANEL**

Michael S. Wilk - Public Arbitrator, Presiding Chair  
Martha Failing, Esq. - Public Arbitrator  
James E. Lane - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Michael S. Wilk  
Michael S. Wilk  
Public Arbitrator, Presiding Chair

May 13, 2005  
Signature Date

/s/ Martha Failing, Esq.  
Martha Failing, Esq.  
Public Arbitrator

May 13, 2005  
Signature Date

/s/ James E. Lane  
James E. Lane  
Non-Public Arbitrator

May 13, 2005  
Signature Date

May 13, 2005  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

Michael S. Wilk - Public Arbitrator, Presiding Chair  
Martha Failing, Esq. - Public Arbitrator  
James E. Lane - Non-Public Arbitrator

Concurring Arbitrators:

Michael S. Wilk

Michael S. Wilk  
Public Arbitrator, Presiding Chair

May 13, 2005

Signature Date

Martha Failing, Esq.  
Public Arbitrator

Signature Date

James E. Lane  
Non-Public Arbitrator

Signature Date

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**Concurring Arbitrators:**

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Michael S. Wilk  
Public Arbitrator, Presiding Chair

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Signature Date

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*Martha Failing*  
Martha Failing, Esq.  
Public Arbitrator

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**MAY 13 2005**  
Signature Date

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James E. Lane  
Non-Public Arbitrator

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Signature Date

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Public Arbitrator, Presiding Chair

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Signature Date

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Martha Failing, Esq.  
Public Arbitrator

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Signature Date

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James E. Lane  
Non-Public Arbitrator

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5/13/2005  
Signature Date

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Date of Service (For NASD office use only)