

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

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In the Matter of the Arbitration Between

Name of Claimants

Alan Toppel and Charlotte Toppel

and

03-00557  
Phoenix, Arizona

Name of Respondents

UBS PaineWebber, Inc. n/k/a UBS Financial Services Inc.  
Harold Langer

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

**REPRESENTATION OF PARTIES**

Alan Toppel and Charlotte Toppel ("**Claimants**") were represented by Gregory E. Good, Esq., Gregory E. Good & Associates, P.C., Tucson, AZ.

UBS PaineWebber, Inc. n/k/a UBS Financial Services Inc. ("**Respondent UBS**") and Harold Langer ("**Respondent Langer**") (collectively as "**Respondents**") were represented by Jesse B. Simpson, Esq., Lewis and Roca LLP, Phoenix, Arizona.

**CASE INFORMATION**

The Statement of Claim was filed on or about January 24, 2003. Submission Agreement of Claimants Alan Toppel and Charlotte Toppel was signed on January 20, 2003.

Statement of Answer was filed by Respondents UBS PaineWebber, Inc. n/k/a UBS Financial Services Inc. and Harold Langer on or about April 7, 2003. Submission Agreement of Respondent UBS PaineWebber, Inc. n/k/a UBS Financial Services Inc. was signed on February 20, 2003. Submission Agreement of Respondent Harold Langer was signed and undated.

**CASE SUMMARY**

Claimants asserted the following causes of action: negligence; suitability violations; Arizona securities fraud; Federal securities fraud; breach of fiduciary duty; breach of contract; common law fraud and intentional misrepresentation; negligent misrepresentation; and *respondeat superior* and supervision liability. Claimants alleged that Respondent Langer ignored their investment objectives and concentrated their investments in the technology and telecommunications sectors.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated:

Alan Toppel wanted to grow his portfolio so that he could accomplish his three goals of living well in retirement, establishing a legacy for his children and grandchildren, and preserving the purchasing power of his portfolio. Consistent with those goals, Mr. Langer helped him establish a diversified portfolio in the spring of 1998 which included annuities, bonds, mutual funds and equities managed by independent third-party money managers with strong track records. Rather than leaving well enough alone, as the market surged forward, Mr. Toppel continually insisted upon reallocating his portfolio to whatever investment advisors were showing the strongest returns. As he did so, more and more of his portfolio became devoted to managed equity accounts through the ACCESS program with managers who specialized in growth stocks. The strategy worked well during the bull market through the spring of 2000; unfortunately, it positioned the portfolio to decline with the market beginning in the summer and fall of 2000. Like millions of other investors, Mr. Toppel saw the value of his portfolio decline in the bear market. Mr. Langer cautioned him and finally persuaded him to go mainly to cash in March of 2001. But then in May, 2001, Mr. Toppel made the fateful decision to return his portfolio to the markets thinking that they were poised for another advance. It was not to be.

Mr. Langer and UBS provided excellent service and honest advice to Mr. Toppel. All of their investment recommendations were consistent with Mr. Toppel's stated investment objectives and financial wherewithal.

### **RELIEF REQUESTED**

Claimants requested an award of the following:

- A. Compensatory damages and interest/lost opportunity damages well in excess of \$1,000,000.00 for the damages to their life savings accounts.
- B. Recovery of commission, margin interest, and other fees charged by the Respondents on the investments.
- C. Recovery of their filing fees and such other costs and expenses as may be incurred in imaging this arbitration.
- D. Attorney's fees pursuant to A.R.S. §§ 12-341.01 and 44-2001.
- E. Punitive damages in an amount the Arbitrators deem appropriate.
- F. Such other relief in favor of Mr. and Mrs. Toppel as the Arbitrators deem just and appropriate under the circumstances.

Respondents requested that the claims asserted against them be dismissed in their entirety and that all fees be assessed against the claimants. Respondents also requested that the panel order the expungement of Mr. Langer's NASD and CRD records.

### **OTHER ISSUES CONSIDERED & 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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "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. Respondent UBS PaineWebber, Inc. n/k/a UBS Financial Services Inc. shall be and hereby is liable for and shall pay to Claimants Alan Toppel and Charlotte Toppel the sum of \$75,000.00 as compensatory damages.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Harold Langer'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 Harold Langer must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees, not specifically awarded or otherwise provided for above.

### **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 = \$375.00

### Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is UBS PaineWebber, Inc. n/k/a UBS Financial Services Inc.

Member surcharge	\$	2,250.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	4,000.00
Total Member Fees	\$	7,000.00

### Adjournment Fees

Adjournments requested during these proceedings:

Hearing Date(s), January 20-23, 2004, adjournment requested by Claimants. Fee = \$1,200.00 waived by the Arbitration Panel.

### 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:

1	Pre-hearing session(s) with a single arbitrator	x	\$450.00	\$	450.00
	December 22, 2003	1	session		
1	Pre-hearing session(s) with Panel	x	1,200.00	\$	1,200.00
	August 11, 2003	1	session		
17	Hearing sessions	x	1,200.00	\$	20,400.00
	June 7, 2004	2	sessions		
	June 8, 2004	2	sessions		
	June 9, 2004	2	sessions		
	June 10, 2004	2	sessions		
	June 11, 2004	2	sessions		
	October 5, 2004	2	sessions		
	October 6, 2004	2	sessions		
	October 7, 2004	2	sessions		
	October 8, 2004	1	session		
	Total Forum Fees		\$	22,050.00	

The Arbitration Panel has assessed \$11,025.00 of the forum fees to Alan Toppel and Charlotte Toppel.

The Arbitration Panel has assessed \$11,025.00 of the forum fees jointly and severally to UBS PaineWebber, Inc. n/k/a UBS Financial Services Inc. and Harold Langer.

**Fee Summary**

Claimants, Alan Toppel and Charlotte Toppel shall be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$	375.00
<u>Forum Fees</u>	= \$	11,025.00
Total Fees	= \$	11,400.00
<u>Less payments</u>	= \$	-1,700.00
Balance Due NASD Dispute Resolution	= \$	9,700.00

Respondent, UBS PaineWebber, Inc. n/k/a UBS Financial Services Inc., shall be and hereby is liable for:

Member Fees	= \$	7,000.00
Total Fees	= \$	7,000.00
<u>Less payments</u>	= \$	-7,000.00
Balance Due NASD Dispute Resolution	= \$	0.00

Respondents, UBS PaineWebber, Inc. n/k/a UBS Financial Services Inc. and Harold Langer, shall be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$	11,025.00
Total Fees	= \$	11,025.00
<u>Less payments</u>	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	11,025.00

**All balances are due to NASD Dispute Resolution**

**ARBITRATION PANEL**

Ronald Edward Hibbing, Esq. - Public Arbitrator, Presiding Chair  
Darrell P. Ladmirault - Public Arbitrator  
Ralph H. Martin, III - Non-Public Arbitrator

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Concurring Arbitrators:

Ronald E. Hibbing  
Ronald Edward Hibbing, Esq.  
Public Arbitrator, Presiding Chair

October 11, 2004  
Signature Date

Darrell P. Ladmirault  
Darrell P. Ladmirault  
Public Arbitrator

Signature Date

Ralph H. Martin, III  
Ralph H. Martin, III  
Non-Public Arbitrator

Signature Date

10-12-04  
Date of Service (For NASD office use only)

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Public Arbitrator

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