

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

BNS Partnership, Brian Shiffman, Neil Shiffman, Susan Shiffman Kaufman, and Shirley Shiffman (Claimants) v. Kirlin Securities, Inc., UBS Financial Services, Inc. f/k/a PaineWebber, Inc., and Gary Vogt (Respondents)

Case Number: 03-00739

Hearing Site: New York, New York

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

REPRESENTATION OF PARTIES

Claimants BNS Partnership ("BNS"), Brian Shiffman ("B. Shiffman"), Neil Shiffman ("N. Shiffman"), Susan Shiffman Kaufman ("S. Kaufman"), and Shirley Shiffman ("S. Shiffman") hereinafter collectively referred to as "Claimants": Kent Gross, Esq., The Law Offices of Robin L. Kissin, Esq., P.C., Quogue, NY. Previously represented by: Kent Gross, Esq., Sinnreich & Safar, LLP, Central Islip, NY.

Respondent Kirlin Securities, Inc. ("Kirlin"): Barry M. Bordetsky, Esq., Kirlin Securities, Inc., Syosset, NY.

Respondent UBS Financial Services, Inc. f/k/a UBS PaineWebber, Inc. ("UBS"): Kenneth G. Crowley, Esq., UBS Financial Services, Inc., New York, NY.

Respondent Gary Vogt ("Vogt") appeared *pro se*. Previously represented by: Barry R. Lax, Esq., The Lax Law Firm, New York, NY and Barry M. Bordetsky, Esq., Kirlin Securities, Inc., Syosset, NY.

CASE INFORMATION

Statement of Claim filed on or about: January 28, 2003.

Amended Statement of Claim filed on or about: May 28, 2004.

Claimant BNS signed the Uniform Submission Agreement: November 24, 2002.

Claimant B. Shiffman signed the Uniform Submission Agreement: November 24, 2002.

Claimant N. Shiffman signed the Uniform Submission Agreement: November 24, 2002.

Claimant S. Kaufman signed the Uniform Submission Agreement: December 24, 2002.

Claimant S. Shiffman signed the Uniform Submission Agreement: November 24, 2002.

Statement of Answer and Motion to Dismiss filed by Respondents Kirlin on or about: April 23, 2003.

Respondent Kirlin signed the Uniform Submission Agreement: May 5, 2003.

Statement of Answer and Motion to Dismiss filed by Respondent UBS on or about: April 23, 2003.

Respondent UBS did not sign the Uniform Submission Agreement.

Statement of Answer filed by Respondent Vogt on or about: May 7, 2003.

Respondent Vogt did not sign the Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: violations of NASD Rules; violations of NYSE Rules; material misrepresentations and/or omissions; violations of Section 10(b) of the Exchange Act and Rule 10b-5; negligence and breach of fiduciary duty; breach of contract; breach of the implied covenant of good faith and fair dealing; violations of Section 20(a) of the Exchange Act and the NASD Conduct Rules for failure to supervise; and loss of financial opportunity and intentional infliction of emotional distress. The causes of action relate to unspecified securities.

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

Unless specifically admitted in its Answer, Respondent UBS denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in his Answer, Respondent Vogt denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$1,600,000.00; interest; exemplary and/or punitive damages in the amount of \$2,500,000.00; costs and disbursements; reasonable attorneys', accountants', and experts' fees; and such other, further or different relief as the Panel may deem just, proper, and equitable.

Respondent Kirlin requested that the Statement of Claim be dismissed in its entirety; that Claimants pay all NASD fees attributable to this arbitration; and any further relief the Panel deems just and equitable.

Respondent UBS requested that the Panel dismiss UBS from this action before the hearing; that Claimants take nothing from UBS and that UBS recover all its costs and attorneys' fees.

Respondent Vogt requested that the Statement of Claim be dismissed in its entirety; and for such other and further relief as the Panel deems just and appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents UBS did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim, is bound by the determination of the Panel on all issues submitted.

Respondents Vogt did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim, and appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

Pursuant to an agreement of the parties before the Chairperson of the Panel, Claimants made a request to amend their Statement of Claim to include additional accounts. On or about May 28, 2004, an Amended Statement of Claim was filed and the Panel approved the addition of claims related to the Shirley Shiffman Trust, Account C7 14890.

On or about June 24, 2004, Claimants notified NASD Dispute Resolution that they withdrew their claims against Respondent UBS with prejudice.

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. Respondent Kirlin is liable for and shall pay to Claimant BNS compensatory damages in the amount of \$25,000.00.
2. Any and all relief not specifically addressed herein, including punitive damages, 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 = \$600.00

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 person at the time of the events giving rise to the dispute. Accordingly, Kirlin Securities, Inc. and UBS Financial Services, Inc. f/k/a UBS PaineWebber, Inc. are parties.

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

September 13, 2004, adjournment by Respondent Kirlin	= Waived
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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:

Three (3) Pre-hearing sessions with a single arbitrator @ \$450.00 = \$ 1,350.00

Pre-hearing conferences: May 7, 2004 1 session
August 9, 2004 1 session
September 24, 2004 1 session

One (1) Pre-hearing session with Panel @ \$1,200.00 = \$ 1,200.00

Pre-hearing conferences: October 30, 2003 1 session

Nineteen (19) Hearing sessions @ \$1,200.00 = \$22,800.00

Hearing Dates: June 29, 2004 2 sessions
July 22, 2004 2 sessions
August 3, 2004 2 sessions
September 27, 2004 2 sessions
January 31, 2005 1 session
February 7, 2005 2 sessions
February 11, 2005 2 sessions
March 4, 2005 2 sessions
March 7, 2005 2 sessions
March 14, 2005 2 sessions

Total Forum Fees = \$25,350.00

1. The Panel has assessed \$12,675.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$12,675.00 of the forum fees against Respondent Kirlin.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. Respondent Kirlin requested duplication of hearing tapes = \$180.00

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$12,675.00
Total Fees	= \$13,275.00
Less payments	= \$ 1,800.00
Balance Due NASD Dispute Resolution	= \$11,475.00

2. Respondent Kirlin is solely liable for:

Member Fees	= \$ 8,550.00
Forum Fees	= \$12,675.00
Administrative Costs	= \$ 180.00
Total Fees	= \$21,405.00
Less payments	= \$ 8,730.00
Balance Due NASD Dispute Resolution	= \$12,675.00

3. Respondent UBS is solely liable for:

Member Fees	= \$8,550.00
Total Fees	= \$8,550.00
Less payments	= \$8,550.00
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

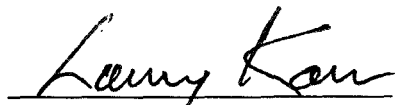
Bernard M. Levine	-	Public Arbitrator, Presiding Chairperson
Larry Kars, Esq.	-	Public Arbitrator
Antoinette E. LaBelle	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

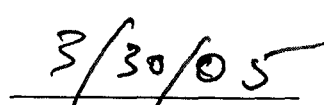
I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Bernard M. Levine
Public Arbitrator, Presiding Chairperson

Signature Date



Larry Kars, Esq.
Public Arbitrator



Signature Date

Antoinette E. LaBelle
Non-Public Arbitrator

Signature Date

April 6, 2005

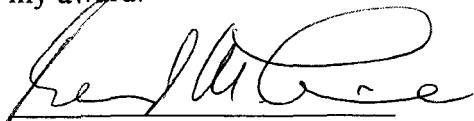
Date of Service (For NASD Dispute Resolution use only)

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Larry Kars, Esq.	-	Public Arbitrator
Antoinette E. LaBelle	-	Non-Public Arbitrator

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Bernard M. Levine
Public Arbitrator, Presiding Chairperson

3/29/05

Signature Date

Larry Kars, Esq.
Public Arbitrator

Signature Date

Antoinette E. LaBelle
Non-Public Arbitrator

Signature Date

April 6, 2005

Date of Service (For NASD Dispute Resolution use only)

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Signature Date

Larry Kars, Esq.
Public Arbitrator

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Non-Public Arbitrator



Signature Date

April 6, 2005

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