

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Mary McManemin, IRA (Claimant) v. UBS PaineWebber, Inc. and Michael Greenstone (Respondents)

Case Number: 03-01490

Hearing Site: New York, New York

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

REPRESENTATION OF PARTIES

Claimant Mary McManemin ("McManemin"), by POA John A. McManemin, hereinafter referred to as "Claimant", appeared *pro se*.

Respondents UBS PaineWebber, Inc. ("UBS") and Michael Greenstone ("Greenstone") hereinafter collectively referred to as "Respondents": Kenneth G. Crowley, Esq., UBS PaineWebber, Inc., New York, NY.

CASE INFORMATION

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

Claimant signed the Uniform Submission Agreement: March 15, 2003.

Joint Statement of Answer filed by Respondents on or about: May 14, 2003.

MSDW did not sign the Uniform Submission Agreement.

Greenstone did not sign the Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: suitability; unauthorized trading; fraud; negligence; failure to supervise; churning; manipulation; and misrepresentation. Claimant's claim involved stock and warrants of Vista 2000, Inc.

Unless specifically admitted in their Motion to Dismiss and 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 \$7,725.00, punitive damages in the amount of \$40,000.00, interest in the amount of \$15,000.00, and costs in the amount of \$675.00.

Respondents requested an award dismissing the Statement of Claim, expunging this matter from the CRD of Michael Greenstone; and such other and further relief as the arbitrators deem just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and, having answered the claim, and appeared and testified at the pre-hearing conference, are bound by the determination of the Arbitrator on all issues submitted.

Respondents' Statement of Answer included a Motion to Dismiss pursuant to Rule 10304 of the NASD Code of Arbitration Procedure ("the Code") on the basis that the transactions involved in the dispute occurred over six years prior to the filing of the Statement of Claim. Claimant submitted several replies to the Motion to Dismiss.

A telephonic pre-hearing conference was held on December 15, 2003 to discuss Respondents' Motion to Dismiss and Claimant's Motion to Amend the Statement of Claim. After hearing oral arguments, the Arbitrator made the following determination:

"Respondents' motion to dismiss the claims brought by Claimant is hereby granted in its entirety pursuant to NASD Rule 10304. These claims are ineligible for arbitration in the NASD forum as six or more years have elapsed from the occurrence or event giving rise to the claim.

- The initial IRA account was opened with UBS PaineWebber by Greenstone in December 1995.
- The purchase of the Vista 2000 warrants occurred in March of 1996.
- Although Claimant alleges that Respondent allowed the warrants to expire in 1998/1999, the event that gave rise to this claim occurred in 1996 by the purchase of the warrants in March and the delisting by the NASDAQ exchange in May of that year. Claimant is estopped from trying to use this allegation to circumvent NASD Rule 10304.

Claimant's motion to amend the Statement of Claim is hereby denied."

AWARD

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

1. Claimant's claims are hereby dismissed in their entirety.

2. Any and all relief not specifically addressed herein, including punitive damages and expungement, 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 = \$175.00

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 person at the time of the events giving rise to the dispute. Accordingly, UBS PaineWebber, Inc. is a party.

Member surcharge = \$ 875.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$1,000.00

Forum Fees and Assessments

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

Two (2) Pre-hearing sessions with the Arbitrator @ \$450.00 = \$900.00

Pre-hearing conferences: November 4, 2003 1 session

December 15, 2003 1 session

Total Forum Fees = \$900.00

1. The Panel has assessed \$900.00 of the forum fees against Claimant.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee = \$ 175.00

Forum Fees = \$ 900.00

Total Fees = \$1,075.00

Less payments = \$ 625.00

Balance Due NASD Dispute Resolution = \$ 450.00

2. UBS is solely liable for:

<u>Member Fees</u>	= \$2,625.00
<u>Total Fees</u>	= \$2,625.00
<u>Less payments</u>	= \$2,625.00
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.

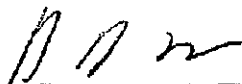
ARBITRATOR

Keely D. Parr, Esq.

Public Arbitrator, Presiding Chair

Concurring Arbitrators' Signature

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.



Keely D. Parr, Esq.
Public Arbitrator, Presiding Chairperson

01-07-04

Signature Date

January 8, 2004

Date of Service (For NASD Dispute Resolution use only)