

Award
NASD Dispute Resolution

COPY

In the Matter of the Arbitration Between:

William McGeever and Evelyn McGeever, Trustees of the William E. & Evelyn J. McGeever Living Trust DTD 12/15/98, Claimant v. UBS Financial Services Inc., Michael E. Hack and James H. Ross, Respondents

Case Number: 03-01655

Hearing Site: San Francisco, California

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

REPRESENTATION OF PARTIES

For Claimant:

Timothy A. Canning, Esq.
Novato, California

For Respondents:

Eric G. Wallis, Esq.
Reed Smith LLP
Oakland, California

CASE INFORMATION

Statement of Claim filed: March 6, 2003

Claimant's Arbitration Brief filed: April 15, 2005

Claimant's Uniform Submission Agreement signed: February 4, 2003

Joint Statement of Answer filed by Respondents UBS Financial Services Inc. fka UBS Paine Webber Inc. ("UBS"), Michael E. Hack and James H. Ross: May 15, 2003

Respondents' Hearing Brief filed: April 14, 2005

Respondent UBS's Uniform Submission Agreement signed: May 17, 2003

Respondent Michael E. Hack's Uniform Submission Agreement signed: May 7, 2003

Respondent James H. Ross' Uniform Submission Agreement filed: May 19, 2003

CASE SUMMARY

Claimant alleged the following claims with respect to investments in various securities, including but not limited to investments in Advanced Fiber Communications: 1) Fraud; 2) Negligence; 3) Breach of Contract; 4) Breach of Fiduciary Duty; 5) Misrepresentation; 6) Unsuitability; and 7) Failure to Supervise.

Respondents denied Claimant's allegations of wrongdoing and denied any liability to Claimant. Respondents also asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested:

1. Damages in the amount of \$1,200,000.00 or subject to proof at hearing;
2. Reimbursement for the reasonable costs and fees in the prosecution of this claim, including expert witness fees and attorney fees;
3. Punitive and exemplary damages; and
4. Any other award of damages this Panel deems appropriate upon conclusion of the evidentiary hearing.

Respondents requested an award in their favor, expungement of the claim from Michael E. Hack's NASD Central Registration Depository record, and their costs incurred in this arbitration proceeding.

OTHER ISSUES CONSIDERED AND DECIDED

On November 17, 2003 and November 20, 2003, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On May 15, 2003, Respondents' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100 the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

During the hearing, the Panel considered the positions of the parties relative to Claimant's motion to re-open case after closing. The Panel denied Claimant's motion.

During the hearing, the Panel considered the positions of the parties relative to Respondent James H. Ross' motion to dismiss and motion for expungement. The Panel ruled to take the motions under submission.

During the hearing, the Panel considered the positions of the parties relative to Respondents' motion to dismiss Claimant's case. The Panel denied the motion.

The parties 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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent UBS is solely liable to and shall pay Claimant the sum of \$150,000.00.
2. Respondent UBS is solely liable to and shall pay Claimant the sum of \$500.00 as reimbursement for Claimant's filing fee.
3. All claims by Claimant against Respondent James H. Ross are dismissed.
4. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent James H. Ross' registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent James H. Ross must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
5. All claims by Claimant against Respondent Michael E. Hack are dismissed. The Panel denied Respondent Hack's request for expungement of this matter from his CRD record.
6. Claimant's claims for punitive and exemplary damages are denied.
7. Except as mentioned in paragraph 2 above, each party shall bear its own costs, including attorney's fees.
8. All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee = \$500.00

Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, UBS is a party and the following fees are assessed:

Member Surcharge	= \$2,800.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$5,000.00</u>
Total Member Fees	= \$8,550.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

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

Pre-hearing conferences:	October 18, 2004	1 session
	March 25, 2005	1 session
	April 13, 2005	1 session

(2) Pre-hearing conference sessions with the Panel @ \$1,200.00/session = \$2,400.00

Pre-hearing conferences:	February 2, 2004	1 session
	September 3, 2004	1 session

(10) Hearing sessions @ \$1,200.00/session = \$12,000.00

Hearings:	April 26, 2005	2 sessions
	April 27, 2005	2 sessions
	April 28, 2005	2 sessions
	November 8, 2005	2 sessions
	November 9, 2005	2 sessions

Total Forum Fees = \$15,750.00

The Panel assessed the \$14,550.00 in forum fees solely to Respondent UBS.

The Panel waived the \$1,200.00 forum fee in connection with the pre-hearing conference held February 2, 2004.

Fee Summary

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 500.00
<u>Less Payments</u>	= \$(1,700.00)
Refund Due Claimant	= \$(1,200.00)

2. Respondent UBS is charged with the following fees and costs:

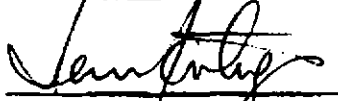
Member Fees	= \$ 8,550.00
<u>Forum Fees</u>	= \$ 14,550.00
Total Fees	= \$ 23,100.00
<u>Less Payments</u>	= \$(8,550.00)
Balance Due NASD Dispute Resolution	= \$ 14,550.00

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

ARBITRATION PANEL

Jonathan H. Krotinger	-	Public Arbitrator, Presiding Chair
Jon H. Sylvester	-	Public Arbitrator
Richard B. Bullock	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Jonathan H. Krotinger
Chair, Public Arbitrator

11/16/05

Signature Date

Jon H. Sylvester
Public Arbitrator

Signature Date

Richard B. Bullock
Non-Public Arbitrator

Signature Date

11/17/05

Date of Service

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