

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Steven Fox and Meryl Fox (Claimants) v. Citicorp Investment Services, Sofia Tara Manashirov, and UBS Financial Services, Inc. f/k/a UBS PaineWebber, Inc.  
(Respondents)

Case Number: 03-01886

Hearing Site: New York, New York

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

**REPRESENTATION OF PARTIES**

Claimants Steven Fox and Meryl Fox ("The Foxes") hereinafter collectively referred to as "Claimants": Marni Rae Robin, Esq., Gusrae, Kaplan & Bruno, PLLC, New York, NY.

Respondents Citicorp Investment Services ("CIS") and Sofia Tara Manashirov ("Manashirov"): Willard Knox, Esq. and Anthony Paduano, Esq., Paduano & Weintraub, LLP, New York, NY. Previously represented by: David Gorfinkel, Esq., Citicorp Investment Services, New York, NY.

Respondent UBS Financial Services, Inc. f/k/a UBS PaineWebber, Inc. ("UBS"): David L. Goldberg, Esq., UBS PaineWebber, Inc., New York, NY.

CIS and Manashirov are hereinafter collectively referred to as "Respondents".

**CASE INFORMATION**

Statement of Claim filed on or about: March 13, 2003.

Claimants signed the Uniform Submission Agreement: February 26, 2003.

Joint Statement of Answer filed by Respondents CIS and Manashirov on or about: June 2, 2003.

Respondent CIS did not sign the Uniform Submission Agreement.

Respondent Manashirov did not sign the Uniform Submission Agreement.

Statement of Answer and Motion to Dismiss filed by Respondent UBS on or about: May 30, 2003.

Respondent UBS signed the Uniform Submission Agreement: May 29, 2003.

### **CASE SUMMARY**

Claimants asserted the following causes of action: negligence; common law fraud; breach of fiduciary duty; breach of contract; violation of § 10(b) and Rule 10b-5 thereunder; respondeat superior; control person liability § 20; and failure to supervise. Claimants' claim involved variable annuities.

Unless specifically admitted in their Answer, Respondents CIS and Manashirov 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.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$129,109.00; reasonable attorneys' fees; costs and disbursements; and such other relief as the arbitrators may deem just and proper.

Respondents CIS and Manashirov requested that the Statement of Claim be dismissed in its entirety; that the Panel award Respondents legal fees and interest; and such other and further relief as the Panel deems appropriate.

Respondent UBS requested dismissal of this proceeding; an award in its favor of the costs and disbursements; and such other and further relief as is just.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondents CIS and Manashirov 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 hearing, are bound by the determination of the Panel on all issues submitted.

On or about March 29, 2004, Claimants withdrew their claims, with prejudice, against Respondent UBS.

During the hearing, Claimants made a Motion for Sanctions and Respondents Made a Motion to Dismiss. After due deliberation the Panel denied both Motions, except as to Count IV of the Statement of Claim which was granted.

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. Respondents CIS and Manashirov are jointly and severally liable for and shall pay to Claimants the sum of \$25,449.00 as compensatory damages. Of this amount, \$6,449.00 represents a penalty paid to liquidate the funds and \$19,000.00 represents the return of commissions that should not have been earned.
2. Any and all relief not specifically addressed herein 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 | = \$300.00 |
|--------------------------|------------|

#### **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, Citicorp Investment Services is a party.

|                         |              |
|-------------------------|--------------|
| Member surcharge        | = \$1,700.00 |
| Pre-hearing process fee | = \$ 750.00  |
| Hearing process fee     | = \$2,750.00 |

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, UBS Financial Services, Inc. f/k/a UBS PaineWebber, Inc. is a party.

|                         |              |
|-------------------------|--------------|
| Member surcharge        | = \$1,700.00 |
| Pre-hearing process fee | = \$ 750.00  |
| Hearing process fee     | = \$2,750.00 |

#### **Adjournment Fees**

Adjournments granted during these proceedings:

June 17, 2004, adjournment by Claimant

= WAIVED

**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:

|  |               |
|--|---------------|
| Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00 | = \$ 900.00   |
| Pre-hearing conferences: April 8, 2004 1 session                 |               |
| May 20, 2004 1 session   |               |
| Two (2) Pre-hearing sessions with the Panel @ \$1,125.00         | = \$ 2,250.00 |
| Pre-hearing conference: November 10, 2003 1 session              |               |
| June 22, 2004 1 session  |               |
| Nine (9) Hearing sessions @ \$1,125.00                           | =\$10,125.00  |
| Hearing Date: June 15, 2004 2 sessions                           |               |
| June 16, 2004 1 sessions   |               |
| August 17, 2004 2 sessions                                       |               |
| August 18, 2004 2 sessions                                       |               |
| September 9, 2004 2 sessions                                     |               |
| Total Forum Fees   | =\$13,275.00  |

1. The Panel has assessed \$4,425.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$8,850.00 of the forum fees jointly and severally against Respondents.

**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. Claimants requested copies of the hearing tapes. = \$ 75.00
2. Respondent CIS requested copies of the hearing tapes. = \$ 180.00

**Fee Summary**

1. Claimants are jointly and severally liable for:

|                             |                   |
|-----------------------------|-------------------|
| Initial Filing Fee          | = \$ 300.00       |
| Forum Fees                  | = \$ 4,425.00     |
| <u>Administrative Costs</u> | <u>= \$ 75.00</u> |

|                                     |                      |
|-------------------------------------|----------------------|
| Total Fees                          | = \$ 4,800.00        |
| <u>Less payments</u>                | <u>= \$ 1,500.00</u> |
| Balance Due NASD Dispute Resolution | = \$ 3,300.00        |

2. Respondent CIS is solely liable for:

|                                     |                      |
|-------------------------------------|----------------------|
| Member Fees                         | = \$ 5,200.00        |
| <u>Administrative Fees</u>          | <u>= \$ 180.00</u>   |
| Total Fees                          | = \$ 5,380.00        |
| <u>Less payments</u>                | <u>= \$ 5,275.00</u> |
| Balance Due NASD Dispute Resolution | = \$ 105.00          |

3. Respondent UBS is solely liable for:

|                                     |                      |
|-------------------------------------|----------------------|
| Member Fees                         | = \$ 5,200.00        |
| Total Fees                          | = \$ 5,200.00        |
| <u>Less payments</u>                | <u>= \$ 5,200.00</u> |
| Balance Due NASD Dispute Resolution | = \$ 0.00            |

4. Respondents CIS and Manashirov are jointly and severally liable for:

|                                     |                  |
|-------------------------------------|------------------|
| Forum Fees                          | = \$ 8,850.00    |
| Total Fees                          | = \$ 8,850.00    |
| <u>Less payments</u>                | <u>= \$ 0.00</u> |
| Balance Due NASD Dispute Resolution | = \$ 8,850.00    |

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

NASD Dispute Resolution  
 Arbitration No. 03-01886  
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**ARBITRATION PANEL**

|                        |   |  |
|------------------------|---|--|
| Allen Kilik, Esq.      | - | Public Arbitrator, Presiding Chairperson |
| Susan C. Lushing, Esq. | - | Public Arbitrator                        |
| Kevin F. Cuddihy       | - | 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 is which is my award.

Allen Kilik

Allen Kilik, Esq.  
 Public Arbitrator, Presiding Chairperson

9-16-04

Signature Date

\_\_\_\_\_  
 Susan C. Lushing, Esq.  
 Public Arbitrator

\_\_\_\_\_  
 Signature Date

\_\_\_\_\_  
 Kevin F. Cuddihy  
 Non-Public Arbitrator

\_\_\_\_\_  
 Signature Date

September 16, 2004  
 Date of Service (For NASD Dispute Resolution use only)

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