

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Lotta Bystrom v. UBS Financial Services Inc., Mark W. Flower and James D. Klein,
Respondents

Case Number: 03-02599

Hearing Site: San Francisco, California

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

REPRESENTATION OF PARTIES

For Claimant:

Richard Sacks
Irwin Stein
Novato, California

For Respondents:

Peter R. Boutin, Esq.
Julie A. Kole, Esq.
Keesal, Young & Logan
San Francisco, California

CASE INFORMATION

Statement of Claim filed: April 8, 2003

Claimant's Uniform Submission Agreement signed: March 13, 2003

Joint Statement of Answer filed by Respondents UBS Financial Services Inc., formerly known as UBS PaineWebber Inc. ("PaineWebber"), Mark W. Flower and James D. Klein: June 5, 2003

Respondent PaineWebber's Uniform Submission Agreement signed: April 30, 2003

Respondent Mark W. Flower's Uniform Submission Agreement signed: June 4, 2003

Respondent James D. Klein's Uniform Submission Agreement signed: May 5, 2003

CASE SUMMARY

Claimant alleged that she brought this claim to seek recompense from Respondent Flower's failure to exercise certain options on Intel Corp on or about April 12, 2002 and further alleged that immediately prior to that date, Claimant had exercised any number of stock options through

Respondents. Claimant further alleged that because of Respondents failure to exercise Claimant's "deep in the money" stock options, these options expired worthless, when in fact they were worth no less than \$99,999 on their expiration date. Claimant also alleged the following claims: 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 affirmative defenses.

RELIEF REQUESTED

Claimant requested:

1. Damages of \$99,999.00 or more, plus interest, according to proof;
2. Reimbursement for the reasonable costs incurred in the prosecution of this claim, including expert witness fees and the costs associated with pursuing this arbitration; and
3. Punitive damages.

Respondents requested:

1. Dismissal of Claimant's claims;
2. Costs; and
3. That the Panel recommend that Claimant's claim be expunged from the Central Registration Depository records of Mr. Flower and Mr. Klein.

OTHER ISSUES CONSIDERED AND DECIDED

On June 21, 2003 and June 23, 2003, Claimant and Claimant's counsel respectively, 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.

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) All claims by Claimant, including the claim for punitive damages, are dismissed.

- 2) Respondent PaineWebber is solely liable for and shall pay to Claimant the sum of \$225.00 as reimbursement for Claimant's filing fee.
- 3) The Panel found that Claimant's claims were not justified against Respondents Mark W. Flower and James D. Klein and recommends the expungement of all reference to the above captioned arbitration from Respondents Flower and Klein'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, Respondents Flower and Klein must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 4) Except as mentioned in paragraph 2 above, each party shall bear all other respective costs, including attorney's fees.
- 5) All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$225.00
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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, PaineWebber is a party and the following fees are assessed:

Member Surcharge	= \$1,100.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= <u>\$1,700.00</u>
Total Member Fees	= \$3,550.00

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:

(2) Pre-hearing conferences with a single arbitrator @ \$450.00/session	=	\$900.00
Pre-hearing conferences:		
December 22, 2003	1 session	
February 19, 2004	1 session	

(1) Pre-hearing conference session with the Panel @ \$750.00/session = \$750.00
Pre-hearing conference: October 10, 2003 1 session

(4) Hearing sessions @ \$750.00/session = \$3,000.00
Hearing: February 26, 2004 2 sessions
February 27, 2004 2 sessions

Total Forum Fees = \$4,650.00

The Panel assessed the \$4,650.00 in forum fees to Respondent PaineWebber.

Fee Summary

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

Initial Filing Fee	= \$ 225.00
<u>Less Payments</u>	= \$ (975.00)
Refund Due Claimant	= \$ (750.00)

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

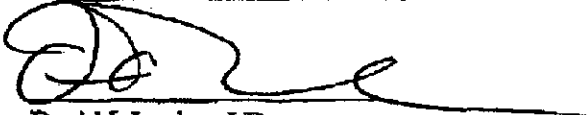
Member Fees	= \$ 3,550.00
<u>Forum Fees</u>	= \$ 4,650.00
Total Fees	= \$ 8,200.00
<u>Less Payments</u>	= \$(3,550.00)
Balance Due NASD-DR	= \$ 4,650.00

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

David L. Levine, J.D.	-	Public Arbitrator, Presiding Chair
Michelle Brant, Esq.	-	Public Arbitrator
Carlos Richard Mangum	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



David L. Levine, J.D.
Chair, Public Arbitrator

3/9/04
Signature Date

Michelle Brant, Esq.
Public Arbitrator

Signature Date

Carlos Richard Mangum
Non-Public Arbitrator

Signature Date

3/09/04
Date of Service

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Chair, Public Arbitrator

Signature Date

Michelle Brant
Michelle Brant, Esq.
Public Arbitrator

3-8-04
Signature Date

Carlos Richard Mangum
Non-Public Arbitrator

Signature Date

3/09/04
Date of Service

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