

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

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In the Matter of the Arbitration Between:

Name of the Claimant

The Edward Mellon Trust,  
By and Through Its Trustee,  
M. Richard Mellon

Case Number: 03-02814

Names of the Respondents

UBS PaineWebber, Inc.  
Gary Lyon Otto

Hearing Site: Pittsburgh, Pennsylvania

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

**REPRESENTATION OF PARTIES**

Claimants, The Edward Mellon Trust, By and Through Its Trustee, M. Richard Mellon, hereinafter collectively, referred to as "Claimant", was represented by Arnold Y. Steinberg, Esq., Arnold Y. Steinberg, P.C., Pittsburgh, Pennsylvania.

Respondents, UBS PaineWebber, Inc. ("UBS") and Gary Lyon Otto ("Otto"), hereinafter collectively referred to as "Respondents", were represented by David C. Franceski, Jr., Esq., Philadelphia, Pennsylvania.

**CASE INFORMATION**

Statement of Claim filed April 15, 2003.

Claimant signed the Uniform Submission Agreement on April 11, 2003.

Statement of Answer filed by Respondents on July 8, 2003.

A representative of Respondent UBS executed the Uniform Submission Agreement on July 7, 2003.

Respondent Otto did not file a Uniform Submission Agreement with NASD Dispute Resolution.

Respondents filed a Motion for Leave to Amend Their Answer To Claimant's Statement of Claim To Add Requested Relief of Attorneys' Fees and Costs on June 22, 2005.

Claimant filed an Opposition To the Motion to Amend Answer on October 10, 2005.

**CASE SUMMARY**

Claimant, in its Statement of Claim asserted the following causes of action, among others: breach of contract, negligence, negligent supervision, breach of fiduciary duty, misrepresentations/non-disclosures, suitability, breach of New York General Business Law Section 349, unjust enrichment, and respondeat superior. The causes of action relate to the purchase and sale of DQE, Inc. stock.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the

Statement of Claim and asserted the following defenses, among others: failure to state a claim upon which relief may be granted; authorization; Claimant's claims are barred by the applicable statutes of limitations and the doctrine of laches; assumption of risk; failure to mitigate damages; and Claimant's claims are barred by the doctrines of waiver and estoppel.

### **RELIEF REQUESTED**

Claimant in its Statement of Claim requested:

Compensatory Damages	\$ 10,000.00.00
Punitive Damages	amount unspecified
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondents in their Statement of Answer requested that the Statement of Claim be dismissed in its entirety.

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

Respondent Otto did not file with NASD Dispute Resolution, a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Arbitration Panel (the "Panel") on all issues submitted.

At the hearing on the merits, Respondents made a Motion to Dismiss the Statement of Claim at the close of Claimant's case-in-chief. The Panel denied this motion.

The Panel did not issue a ruling on Respondents' Motion to Amend their Statement of Answer.

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, the testimony and evidence presented at the hearing, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are denied in their entirety;
2. Claimant's claims for punitive damages are denied in their entirety;
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Otto'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, Respondent Otto must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;

4. All claims for attorneys' fees are denied in their entirety;
5. The parties shall bear their respective costs, except as Fees are specifically addressed below; and
6. Any and all relief not specifically addressed herein is denied in its entirety.

### **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
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#### **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(s) at the time of the events giving rise to the dispute. Accordingly, Respondent UBS is a party.

Member surcharge	= \$ 3,350.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,500.00
Total Member Fees	= \$ 9,600.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

October 22 and 25 - 26, 2004, adjournment requested by the parties	= \$ 1,200.00
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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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing session with Panel @ \$ 1,200.00	= \$ 2,400.00
Pre-hearing conferences:	
November 24, 2003	1 session
October 27, 2004	1 session
Nine (9) Hearing sessions @ \$ 1,200.00	= \$ 10,800.00
Hearing Dates:	
June 27, 2005	2 sessions
June 28, 2005	2 sessions
June 29, 2005	2 sessions

September 9, 2005 2 sessions  
September 10, 2005 1 session

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Total Forum Fees = \$ 13,200.00

1. The Panel has assessed \$ 6,600.00 of the forum fees to Claimant.
2. The Panel has assessed \$ 6,600.00 of the forum fees jointly and severally to Respondents.

### **FEE SUMMARY**

Claimant is assessed and shall pay:

Initial Filing Fee	= \$ 600.00
Adjournment Fee	= \$ 600.00
Forum Fees	= \$ 6,600.00
Total Fees	= \$ 7,800.00
Less payments	= \$ 1,800.00
Balance Due NASD Dispute Resolution	= \$ 6,000.00

Respondent UBS is assessed and shall pay:

Member Fees	= \$ 9,600.00
Total Fees	= \$ 9,600.00
Less payments	= \$ 9,600.00
Balance Due NASD Dispute Resolution	= \$ 00.00

Respondents, UBS and Otto, are jointly and severally assessed and shall pay:

Adjournment Fee	= \$ 600.00
Forum Fees	= \$ 6,600.00
Total Fees	= \$ 7,200.00
Less payments	= \$ 5,500.00
Balance Due NASD Dispute Resolution	= \$ 1,700.00

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

### **ARBITRATION PANEL**

Larry A. Feldman	- Public Arbitrator, Presiding Chairperson
Beth Rackley Hesselton	- Public Arbitrator, Panelist
William R. Gruver	- Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures



Larry A. Feldman  
Public Arbitrator, Presiding Chairperson

11-11-2005

Signature Date

Beth Rackley Hesselton  
Public Arbitrator, Panelist

Signature Date

William R. Gruver  
Non-Public Arbitrator, Panelist

Signature Date

November 15, 2005  
Date of Service (For NASD Dispute Resolution office use only)

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Larry A. Feldman  
Public Arbitrator, Presiding Chairperson

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Signature Date

  
Beth Rackley Heggelson  
Public Arbitrator, Panelist

11-13-05  
Signature Date

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William R. Gruver  
Non-Public Arbitrator, Panelist

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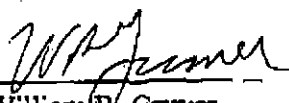
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