

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Claimants

John D. Rivers and Elizabeth Rivers

v.

03-03783  
Denver, Colorado

Respondents

UBS Financial Services, Inc. f/k/a UBS  
PaineWebber, Inc. and Robert A. Levy

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Nature of Dispute: Customers v. Member and Associated Person

**REPRESENTATION OF PARTIES**

John D. Rivers and Elizabeth Rivers ("Claimants") appeared pro se.

UBS Financial Services, Inc. f/k/a UBS PaineWebber, Inc. ("UBS") and Robert A. Levy ("Levy"), hereinafter referred to as ("Respondents"), were represented by Andrew A. Shoemaker, Esq., of Hogan & Hartson L.L.P., Boulder, Colorado.

**CASE INFORMATION**

The Statement of Claim was filed on or about May 23, 2003. Submission Agreements of Claimants were signed on or about May 15, 2003.

A Joint Statement of Answer was filed by Respondents UBS Financial Services, Inc. f/k/a UBS PaineWebber, Inc. and Robert A. Levy on or about July 18, 2003. Submission Agreement of Respondent UBS Financial Services, Inc. f/k/a UBS PaineWebber, Inc. was signed on or about June 10, 2003. Submission Agreement of Respondent Robert A. Levy was signed on or about July 18, 2003.

Respondents filed a Motion to Dismiss on or about July 18, 2003. Claimants filed a Response in Opposition on or about July 29, 2003. Respondents filed a Reply in Support of their Motion to Dismiss on or about August 20, 2003.

**CASE SUMMARY**

Claimant asserted causes of action including the following: breach of fiduciary duty, failure to execute, failure to supervise, negligence and suitability. The causes of action related to Claimants' allegations that Respondents invested them in mutual funds that were unsuitable given their financial

goal of retirement. Claimants asserted that it was their intention to retire and be able to withdraw \$50,000 a year for life from the invested proceeds and Respondents should have recommended an investment strategy that focused on preservation of capital over one focused on potential gains in equities.

Respondents denied the allegations set forth in the Statement of Claim and asserted defenses including the following: Claimants failed to state a claim upon which relief can be granted; Claimants expressly, specifically and knowingly authorized, ordered, directed, approved, confirmed and/or ratified all of the conduct and transactions of which they now complain; Claimants expressly and implicitly represented to Respondents and that they understood the nature and risk of the securities they purchased from Respondents, and that they knowingly and voluntarily assumed and accepted such risk, including, without limitation, the risk of loss inherent in investing in the securities market; and Claimants' claims are barred in whole or in part by virtue of their breach of their contractual obligations to UBS, their unclean hands and their failure to exercise due diligence in monitoring their accounts.

#### **RELIEF REQUESTED**

Claimants requested an award in the amount of \$50,000 a year from Respondents for life. In addition, Claimants requested that Respondents pay all income taxes on such sums for life, punitive damages, costs, and any other relief that the Panel deemed just and equitable.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

#### **OTHER ISSUES CONSIDERED & DECIDED**

Claimant submitted an unsolicited post-hearing brief on or about March 3, 2004. Respondents filed an objection to the submission of post-hearing briefs on or about March 8, 2003.

To the extent that the Panel has not yet ruled on any Motion, it is hereby denied with prejudice

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. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with NASD Dispute Resolution ("NASD").

#### **AWARD**

After considering the pleadings, the testimony, the post-hearing submissions, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims, each and all, are hereby denied and dismissed with prejudice;
2. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, including punitive damages, are denied with prejudice; and
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys' fees.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee = \$ 250

#### **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. In this matter, the member firm is UBS Financial Services, Inc. f/k/a UBS PaineWebber, Inc.

|                         |            |
|-------------------------|------------|
| Member surcharge        | = \$ 1,500 |
| Pre-hearing process fee | = \$ 750   |
| Hearing process fee     | = \$ 2,200 |

#### **Forum Fees and Assessments**

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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:

One (1) Pre-hearing session with Panel x \$ 1,000 = \$ 1,000

Pre-hearing conference: 11/12/2003 1 session

Two (2) Hearing sessions with Panel x \$ 1,000 = \$ 2,000

Hearing Dates: 03/02/2004 2 sessions

Total Forum Fees = \$ 3,000

The Arbitration Panel has assessed \$ 1,500 of the forum fees jointly and severally to John D. Rivers and Elizabeth Rivers.

The Arbitration Panel has assessed \$ 1,500 of the forum fees jointly and severally to UBS Financial Services, Inc. f/k/a UBS PaineWebber, Inc. and Robert A. Levy.

Fee Summary

Claimants, John D. Rivers and Elizabeth Rivers are jointly and severally liable for:

|                                     |            |
|-------------------------------------|------------|
| Initial Filing Fee                  | = \$ 250   |
| <u>Forum Fees</u>                   | = \$ 1,500 |
| <u>Total Fees</u>                   | = \$ 1,750 |
| <u>Less payments</u>                | = \$ 1,250 |
| Balance Due NASD Dispute Resolution | = \$ 500   |

Respondent, UBS Financial Services, Inc. f/k/a UBS PaineWebber, Inc., is liable for:

|                                     |            |
|-------------------------------------|------------|
| <u>Member Fees</u>                  | = \$ 4,450 |
| <u>Total Fees</u>                   | = \$ 4,450 |
| <u>Less payments</u>                | = \$ 4,450 |
| Balance Due NASD Dispute Resolution | = \$ 0     |

Respondents, UBS Financial Services, Inc. f/k/a UBS PaineWebber, Inc. and Robert A. Levy are jointly and severally liable for:

|                                     |            |
|-------------------------------------|------------|
| <u>Forum Fees</u>                   | = \$ 1,500 |
| <u>Total Fees</u>                   | = \$ 1,500 |
| <u>Less payments</u>                | = \$ 0     |
| Balance Due NASD Dispute Resolution | = \$ 1,500 |

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

ARBITRATION PANEL

Arthur E. Otten, Jr., Esq. - Public Arbitrator, Presiding Chair  
Ronald G. Guida - Public Arbitrator  
William A. Conklin- Non-Public Arbitrator

Concurring Arbitrators:

\_\_\_\_\_  
Arthur E. Otten, Jr., Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Ronald G. Guida  
Public Arbitrator

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

\_\_\_\_\_  
William A. Conklin  
Non-Public Arbitrator

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

2/10/04  
Date of Service (NASD use only)

ARBITRATION PANEL

Arthur E. Otten, Jr., Esq. - Public Arbitrator, Presiding Chair  
Ronald G. Guida - Public Arbitrator  
William A. Conklin - Non-Public Arbitrator

Concurring Arbitrators:

Arthur E. Otten Jr.  
Arthur E. Otten, Jr., Esq.  
Public Arbitrator, Presiding Chair

3/12/04  
Signature Date

Ronald G. Guida  
Ronald G. Guida  
Public Arbitrator

Signature Date

William A. Conklin  
William A. Conklin  
Non-Public Arbitrator

Signature Date

3/16/04  
Date of Service (NASD use only)

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Signature Date

Ronald G. Guida  
\_\_\_\_\_  
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Public Arbitrator

March 16, 2004  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
William A. Conklin  
Non-Public Arbitrator

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

3/16/04  
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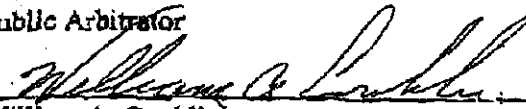
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