

**Stipulated Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Thomas M. Capps & Michele D. Capps, Trustees of the Thomas M. Capps & Michele D. Capps Family Trust DTD 3/23/99, PaineWebber Cust. Rollover IRA Tom Capps, PaineWebber Cust. Roth IRA Michele Capps, Thomas Capps C/F James Capps CA UTMA, Thomas Capps C/F Amy Capps CA UTMA, Tom Capps IRA FBO James Capps and Tom Capps IRA FBO Amy Capps, Claimants, vs. UBS PaineWebber, Inc., Martin Embree Drake, Gregory Michael Sevlia and Larry Joel Shaw, Respondents

Case Number: 03-03863

Hearing Site: San Francisco, California

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

**REPRESENTATION OF PARTIES**

For Claimants:

James Jay Seltzer, Esq.  
Law Offices of James Jay Seltzer  
Emeryville, California

For Respondents:

Gordon C. Young, Esq.  
Kevin J. Woods, Esq.  
Keesal, Young & Logan  
San Francisco, California

**CASE INFORMATION**

Statement of Claim filed: May 27, 2003

Claimants' Uniform Submission Agreement signed: May 21, 2003

Joint Statement of Answer filed by Respondents UBS PaineWebber, Inc. nka UBS Financial Services, Inc. ("UBS"), Martin Embree Drake, Gregory Michael Sevlia and Larry Joel Shaw: August 13, 2003

### **CASE SUMMARY**

Claimants' Statement of Claim complains of transactions effected in Claimants' accounts by Messrs. Drake, Sevlian and Shaw, representatives of UBS, and allege that Respondents are liable to Claimants for the losses sustained in Claimants' UBS accounts. Claimants alleged that the above-referenced dispute involves investments in various technology and telecommunication stocks, including investments in a PaineWebber Nasdaq 100 stock index mutual fund.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim and asserted affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested actual damages of approximately \$1,000,000.00, punitive damages in the amount of \$3,500,000.00, treble damages, costs, attorney's fees and such further action deemed just and appropriate.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety and an award of costs. Respondents Martin Embree Drake, Gregory Michael Sevlian and Larry Joel Shaw also requested expungements of all reference to the above captioned arbitration from their registration records maintained by the NASD Central Registration Depository ("CRD").

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

On July 2, 2003, Claimants and Claimants' 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 Claimants 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.

Respondents UBS PaineWebber, Inc., Martin Embree Drake, Gregory Michael Sevlian and Larry Joel Shaw did not file with the NASD Dispute Resolution a properly executed Submission to Arbitration but are required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure and having answered the claim are bound by the determination of the Arbitration Panel on all issues submitted.

Claimants voluntarily dismissed with prejudice all claims against Respondents Martin Embree Drake, Gregory Michael Sevljan, and Larry Joel Shaw.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies.

### **STIPULATED DEMAND AND RECOMMENDATION OF EXPUNGEMENT**

The parties hereby stipulate that all claims asserted by the Claimants against UBS have been resolved.

The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents Martin Embree Drake's, Gregory Michael Sevljan's and Larry Joel Shaw's registration records maintained by the CRD, with the understanding that pursuant to NASD Notice to Members 99-09, Respondents Martin Embree Drake, Gregory Michael Sevljan and Larry Joel Shaw must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

### **AWARD**

After considering the preceding Stipulation of the parties, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel notes the parties' stipulation that all claims asserted by the Claimants against Respondents have been resolved.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents Martin Embree Drake's, Gregory Michael Sevljan's and Larry Joel Shaw's registration records maintained by the CRD, with the understanding that pursuant to NASD Notice to Members 99-09, Respondents Martin Embree Drake, Gregory Michael Sevljan and Larry Joel Shaw must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. Each party shall bear its own costs, including attorney's fees.
4. 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	= \$	600.00
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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, the member firm UBS is a party and the following fees are assessed:

Member Surcharge	= \$	3,350.00
Pre-Hearing Process Fee	= \$	750.00
<u>Hearing Process Fee</u>	= \$	<u>5,500.00</u>
<b>Total Member Fees</b>	= \$	<b>9,600.00</b>

#### **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:

(1) Pre-hearing conference session with the Panel @ \$1,200.00/session	= \$	1,200.00
Pre-hearing conference: December 2, 2003	1 session	

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<b>Total Forum Fees</b>	= \$	<b>1,200.00</b>
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1. The Panel assessed \$600.00 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$600.00 of the forum fees jointly and severally to Respondents.

### **Fee Summary**

1. Claimants are charged with the following fees and costs:

Initial Filing Fee	= \$	600.00
<u>Forum Fees</u>	= \$	<u>600.00</u>
Total Fees	= \$	1,200.00
<u>Less Payments</u>	= \$	<u>(1,800.00)</u>
<b>Refund Due Claimants</b>	= \$	<b>(600.00)</b>

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

Member Fees	= \$ 9,600.00
<u>Less Payments</u>	= \$ (9,600.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ (0.00)</b>

3. Respondents UBS, Martin Embree Drake, Gregory Michael Sevlia and Larry Joel Shaw are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 600.00
<u>Less Payments by UBS</u>	= \$ (600.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ (0.00)</b>

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.

**Parties' Signatures**

Dated: \_\_\_\_\_

\_\_\_\_\_  
James Jay Seltzer  
Law Offices of James Jay Seltzer  
Attorneys for  
Thomas M. Cappel & Michele D. Cappel,  
Trustees of the Thomas M. Cappel & Michele  
D. Cappel Family Trust DTD 3/23/99,  
PaineWebber Cust. Rollover IRA Tom Cappel,  
PaineWebber Cust. Roth IRA Michele Cappel,  
Thomas Cappel C/F James Cappel CA  
UTMA, Thomas Cappel C/F Amy Cappel CA  
UTMA, Tom Cappel IRA FBO James Cappel  
and Tom Cappel IRA FBO Amy Cappel

Dated: \_\_\_\_\_

\_\_\_\_\_  
Gordon C. Young  
Kevin J. Woods  
Keesal, Young & Logan  
Attorneys for  
UBS PaineWebber, Inc., Martin Embree Drake,  
Gregory Michael Sevlia and Larry Joel Shaw

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Parties' Signatures

Dated: 10/14/04

  
James Jay Seltzer  
Law Offices of James Jay Seltzer  
Attorneys for  
Thomas M. Cappel & Michele D. Cappel,  
Trustees of the Thomas M. Cappel & Michele  
D. Cappel Family Trust DTD 3/23/99,  
PaineWebber Cust. Rollover IRA Tom Cappel,  
PaineWebber Cust. Roth IRA Michele Cappel,  
Thomas Cappel C/F James Cappel CA  
UTMA, Thomas Cappel C/F Amy Cappel CA  
UTMA, Tom Cappel IRA FBO James Cappel  
and Tom Cappel IRA FBO Amy Cappel

Dated: \_\_\_\_\_

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Keesal, Young & Logan  
Attorneys for  
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<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ (0.00)</b>

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Trustees of the Thomas M. Cappels & Michele  
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PaineWebber Cust. Rollover IRA Tom Cappels,  
PaineWebber Cust. Roth IRA Michele Cappels,  
Thomas Cappels C/F James Cappels CA  
UTMA, Thomas Cappels C/F Amy Cappels CA  
UTMA, Tom Cappels IRA FBO James Cappels  
and Tom Cappels IRA FBO Amy Cappels

Dated: October 15, 2004

Kevin J. Woods  
Gordon C. Young  
Kevin J. Woods  
Keesal, Young & Logan  
Attorneys for  
UBS PaineWebber, Inc., Martin Embree Drake,  
Gregory Michael Sevlian and Larry Joel Shaw

ARBITRATION PANEL

Thomas D. Reese, Esq.	-	Public Arbitrator, Presiding Chair
D'Anne J. Quinton	-	Public Arbitrator
Darcy Jill Jorgensen	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Thomas D. Reese  
Thomas D. Reese, Esq.  
Chair, Public Arbitrator

11/15/04  
Signature Date

D'Anne J. Quinton  
D'Anne J. Quinton  
Public Arbitrator

Signature Date

Darcy Jill Jorgensen  
Darcy Jill Jorgensen  
Non-Public Arbitrator

Signature Date

11/16/04  
Date of Service



**ARBITRATION PANEL**

Thomas D. Reese, Esq.  
D'Anne J. Quinton  
Darcy Jill Jorgensen

- Public Arbitrator, Presiding Chair  
- Public Arbitrator  
- Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Thomas D. Reese, Esq.  
Chair, Public Arbitrator

Signature Date

D'Anne Quinton  
D'Anne J. Quinton  
Public Arbitrator

10-30-04  
Signature Date

Darcy Jill Jorgensen  
Non-Public Arbitrator

Signature Date

11/16/04  
Date of Service

**ARBITRATION PANEL**

Thomas D. Reese, Esq.	-	Public Arbitrator, Presiding Chair
D'Anne J. Quinton	-	Public Arbitrator
Darcy Jill Jorgensen	-	Non-Public Arbitrator

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Thomas D. Reese, Esq.  
Chair, Public Arbitrator

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

\_\_\_\_\_  
D'Anne J. Quinton  
Public Arbitrator

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

  
\_\_\_\_\_  
Darcy Jill Jorgensen  
Non-Public Arbitrator

10/26/04  
Signature Date

11/16/04  
Date of Service