

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

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In the Matter of the Arbitration Between:

Donald H. Richards IRA, Claimant v. UBS Financial Services Inc. and Angeli Aguila Forster,  
Respondents

Case Number: 03-04176

Hearing Site: San Diego, California

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

**REPRESENTATION OF PARTIES**

For Claimant:

Arthur S. Leider  
Investors Arbitration Specialist  
San Diego, California

For Respondents:

Robert H. Logan, Esq.  
Scott E. Rahn, Esq.  
Keesal, Young & Logan  
Long Beach, California

**CASE INFORMATION**

Statement of Claim filed: June 7, 2003

Amended Statement of Claim filed: November 29, 2003

Second Amended Statement of Claim filed: January 19, 2004

Third Amended Statement of Claim filed: January 24, 2004

Fourth Amended Statement of Claim filed: April 27, 2004

Claimant's Uniform Submission Agreement signed: May 8, 2003

Joint Statement of Answer filed by Respondents to Claimant's Statement of Claim:  
August 27, 2003

Joint Statement of Answer filed by Respondent UBS Financial Services Inc. to Claimant's Second  
Amended Statement of Claim: February 12, 2004

Respondent Angeli Aguila Forster's Uniform Submission Agreement signed: September 10, 2003

### **CASE SUMMARY**

In his Statements of Claim, Claimant alleged breach of fiduciary duty, negligence, fraudulent misrepresentation, omission, unsuitable recommendations, constructive fraud, and breach of duty of reasonable care in violation of Cal. Prob. Code §16040. The dispute involved the purchase and/or sale of Pimco Innovation Fund, MFS Utilities Fund, Oppenheimer Global Growth, Dreyfus Worldwide Growth, and UBS Tactical Allocation Fund.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statements of Claim.

### **RELIEF REQUESTED**

In his Initial Statement of Claim, Claimant requested compensatory damages in the amount of \$250,000.00, punitive or exemplary damages in the amount of \$250,000.00, legal fees, and arbitration costs.

In his First Amended Statement of Claim, Claimant requested compensatory damages in the amount of \$250,000.00, punitive or exemplary damages in the amount of \$250,000.00, pre-award and post-award interest, legal fees, and arbitration costs.

In his Second and Third Amended Statements of Claim, Claimant requested compensatory damages in the amount of \$192,014.00, punitive or exemplary damages in the amount of \$300,000.00, pre-award and post-award interest, representation fees, and arbitration costs.

Respondents requested dismissal of the Claimant's Statements of Claim in their entirety, attorney's fees, and arbitration costs. Additionally, Respondent Angeli Aguila Forster requested that all references to this matter be expunged from her CRD record.

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

On May 8, 2003, Claimant and Claimant's representative 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.

On November 10, 2003, NASD Dispute Resolution received notice of dismissal with prejudice against Respondent Angeli Aguila Forster.

On December 2, 2003, NASD Dispute Resolution received Claimant's Motion to Take Leave to Amend and First Amended Statement of Claim.

On December 5, 2003, NASD Dispute Resolution received notice that Respondent UBS Financial Services Inc. did not oppose Claimant's Motion to Amend the Statement of Claim.

On December 17, 2003, the Arbitration Panel granted Claimant's Motion to Amend the Statement of Claim.

On January 19, 2004, NASD Dispute Resolution received Claimant's amended dismissal against Respondent Angeli Aguila Forster without prejudice.

On January 22, 2004, NASD Dispute Resolution received Respondent UBS Financial Services Inc.'s opposition to Claimant's attempt to Amend the November 10, 2003 dismissal with prejudice against Angeli Aguila Forster.

On January 23, 2004, NASD Dispute Resolution received Claimant's Motion to Take Leave to Amend His Statement of Claim and Claimant's Second Amended Statement of Claim.

On January 27, 2004, NASD Dispute Resolution received Claimant's Motion to Take Leave to Amend His Statement of Claim and Claimant's Third Amended Statement of Claim.

On January 30, 2004, the Arbitration Panel denied Claimant's motion to amend Claimant's dismissal with prejudice of Respondent Angeli Aguila Forster as a party and to convert such dismissal into a dismissal without prejudice. On this same date, the Arbitration Panel granted Claimant's Motion to File Second Amended Statement of Claim.

On April 29, 2004, NASD Dispute Resolution received Claimant's Motion to Take Leave to Amend His Statement of Claim and Claimant's Fourth Amended Statement of Claim.

On May 21, 2004, the Arbitration Panel granted Claimant's motion to amend the Statement of Claim by filing the Third Amended Statement of Claim dated January 24, 2004. Accordingly, Respondent Angeli Aguila Forster was added as a Respondent. On this same date, the Arbitration Panel granted Respondents leave to file an Amended Answer on or before May 31, 2004. Otherwise, the Respondents' pleading shall compromise the Answer by Respondents dated August 28, 2003 as amended with respect to Respondent UBS Financial Services Inc., by the Answer dated February 12, 2004 to the Second Amended Statement of Claim. Claimant's motion to file a Fourth Amended Statement of Claim was denied.

Respondent UBS Financial Services Inc. did not file with the NASD Dispute Resolution a properly executed submission agreement 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 Panel on all issues submitted.

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) Respondents are jointly and severally liable to and shall pay Claimant \$138,000.00 in compensatory damages.
- 2) Claimant's request for punitive damages is denied.
- 3) Respondent Angeli Aguila Forster's request for expungement is denied.
- 4) The parties shall bear their respective costs, including attorney's fees.
- 5) All other relief requested and 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	= \$ 300.00
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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 Financial Services Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 2,750.00</u>
<b>Total Member Fees</b>	<b>= \$ 5,200.00</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 Panel. The following fees are assessed:

Two (2) Pre-hearing conference sessions with the Panel @ \$1,125.00/session = \$ 2,250.00

Pre-hearing conferences:      November 4, 2003                      1 session  
   May 21, 2004                      1 session

Six (6) Hearing sessions @ \$1,125.00/session = \$ 6,750.00

Hearings:                      June 29, 2004                      2 sessions  
   June 30, 2004                      2 sessions  
   July 1, 2004                      2 sessions

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**Total Forum Fees** = \$ 9,000.00

The Panel assessed \$9,000.00 of the forum fees to Respondent UBS Financial Services Inc.

**Fee Summary**

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

Initial Filing Fee	= \$ 300.00
Less payments	= \$(1,425.00)
<b>Refund Due Claimant</b>	<b>= \$(1,125.00)</b>

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

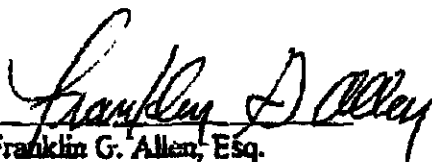
Member Fees	= \$ 5,200.00
Forum Fees	= \$ 9,000.00
Total Fees	= \$14,200.00
Less payments	= \$( 6,450.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 7,750.00</b>

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

**ARBITRATION PANEL**

Franklin G. Allen, Esq.	-	Public Arbitrator, Presiding Chair
Marjorie B. Newsom	-	Public Arbitrator
Artee H. Walker, MBA	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Franklin G. Allen, Esq.  
Chair, Public Arbitrator

7-2-2004  
Signature Date

\_\_\_\_\_  
Marjorie B. Newsom  
Public Arbitrator

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

\_\_\_\_\_  
Artee H. Walker, MBA  
Non-Public Arbitrator

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

7/8/04  
Date of Service

ARBITRATION PANEL

Franklin G. Allen, Esq.	-	Public Arbitrator, Presiding Chair
Marjorie B. Newsom	-	Public Arbitrator
Artee H. Walker, MBA	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

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Franklin G. Allen, Esq.  
Chair, Public Arbitrator

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Signature Date

*Marjorie B. Newsom*  
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Marjorie B. Newsom  
Public Arbitrator

*07/06/04*  
\_\_\_\_\_  
Signature Date

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Artee H. Walker, MBA  
Non-Public Arbitrator

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

*7/8/04*  
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Date of Service

ARBITRATION PANEL

Franklin G. Allen, Esq.

Public Arbitrator, Presiding Chair

Marjorie B. Newsom

Public Arbitrator

Artee H. Walker, MBA

Non-Public Arbitrator

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Franklin G. Allen, Esq.  
Chair, Public Arbitrator

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

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Marjorie B. Newsom  
Public Arbitrator

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

A. H. Walker  
Artee H. Walker, MBA  
Non-Public Arbitrator

7-6-04  
Signature Date

7/8/04  
Date of Service