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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Sarah L. Groth

Case Number: 03-04399

Names of the Respondents  
Dain Rauscher, Incorporated  
"Carl" Lambert  
UBS PaineWebber, Inc.

Hearing Site: New Orleans, Louisiana

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

**REPRESENTATION OF PARTIES**

For Sarah L. Groth, hereinafter referred to as "Claimant": Donald L. Kneipp, Esq., Monroe, Louisiana.

For Respondent Dain Rauscher, Incorporated ("DRI"): John C. Anjier, Esq., Liskow & Lewis, New Orleans, Louisiana.

For Respondent UBS PaineWebber, Inc. ("UBS"): Jack Ballard, Esq., Ballard Law Firm, Houston, Texas.

For Respondent "Carl" Lambert ("Lambert"): John C. Anjier, Esq., Liskow & Lewis, New Orleans, Louisiana and Jack Ballard, Esq., Ballard Law Firm, Houston, Texas.

**CASE INFORMATION**

Statement of Claim filed on or about: June 16, 2003.

Claimant signed the Uniform Submission Agreement: June 13, 2003.

Statement of Answer filed by Respondents DRI and Lambert on or about: September 4, 2003.

Statement of Answer filed by Respondents UBS and Lambert on or about: September 4, 2003.

Amended Answer filed by Respondents UBS and Lambert on or about: September 17, 2003.

Respondent DRI signed the Uniform Submission Agreement: June 7, 2003

Respondent UBS signed the Uniform Submission Agreement: September 3, 2003.

Respondent Lambert signed the Uniform Submission Agreement: September 3, 2003.

Motion to Dismiss filed by Respondents UBS and Lambert on or about: September 4, 2003.

Opposition to Respondents UBS' and Lambert's Motion to Dismiss filed by Claimant on or about: December 8, 2003.

Reply to Claimant's Opposition filed by Respondents UBS and Lambert on or about: February 9, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: negligence and breach of fiduciary duty. The causes of action relate to a change in investment strategy in Claimant's Pacific Life Variable Annuity from that of a

conservative, balanced asset allocation to an aggressive, equity-based portfolio comprised of unspecified securities.

Unless specifically admitted in their Answer, Respondents DRI and Lambert denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in their Answer, as amended, Respondents UBS and Lambert denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$782,644.09, reimbursement for the costs associated with these proceedings and all other just and equitable relief.

Respondents DRI and Lambert requested that the Statement of Claim be dismissed in its entirety, that this complaint be removed from the NASD Central Registration Depository ("CRD") record of Respondent Lambert and that judgment be entered awarding Respondents DRI and Lambert their costs in defending this action.

Respondents UBS and Lambert requested that the allegations contained in the Statement of Claim be dismissed in all respects, that this complaint be removed from the CRD record of Respondent Lambert, that Respondents UBS and Lambert recover their attorneys' fees and costs and that the Panel award such further relief that the Panel deemed just.

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

Claimant asserted claims against a non-member whose submission to the jurisdiction of NASD Dispute Resolution was voluntary. The non-member declined to voluntarily submit to the jurisdiction of NASD Dispute Resolution.

Respondents UBS and Lambert filed a motion to dismiss in which they asserted that Claimant's claims should be dismissed as a matter of law because Respondents UBS and Lambert had no duty to continue to advise Claimant regarding her investments once they were transferred from Respondent DRI to Respondent UBS. In her response, Claimant asserted that Respondents UBS' and Lambert's position was both factually and legally incorrect. On or about March 22, 2004, the Panel issued an Order that denied the motion.

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

Respondent DRI is liable and shall pay compensatory damages to Claimant in the amount of \$219,000.00, plus interest at the Louisiana statutory rate beginning 30 days from the date of this Award until the Award is paid in full to Claimant.

Respondent UBS is liable and shall pay compensatory damages to Claimant in the amount of \$73,000.00, plus interest at the Louisiana statutory rate beginning 30 days from the date of this Award until the Award is paid in full to Claimant.

All claims against Respondent Lambert are dismissed, with prejudice.

Each party shall bear their own costs and attorneys' fees.

Any and all claims for relief not specifically addressed herein, including Respondents' request for expungement, are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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 = \$375.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondents DRI and UBS are member firms and parties.

Respondent DRI's Member surcharge	= \$2,250.00
Respondent DRI's Pre-hearing process fee	= \$ 750.00
<u>Respondent DRI's Hearing process fee</u>	<u>= \$4,000.00</u>
Respondent DRI's Total Member Fees	= \$7,000.00

Respondent UBS' Member surcharge	= \$2,250.00
Respondent UBS' Pre-hearing process fee	= \$ 750.00
<u>Respondent UBS' Hearing process fee</u>	<u>= \$4,000.00</u>
Respondent UBS' Total Member Fees	= \$7,000.00

#### **Adjournment Fees**

No adjournments were requested in this matter.

#### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

Injunctive relief fees were not assessed in this matter.

**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:

One (1) Pre-hearing session with the Panel @ \$1,200.00/session	= \$1,200.00
Pre-hearing conference:      March 16, 2004                      1 session	
Seven (7) Hearing sessions @ \$1,200.00/session	= \$8,400.00
Hearing Dates:                      November 17, 2004                      2 sessions	
November 18, 2004                      3 sessions	
November 19, 2004                      2 sessions	
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Total Forum Fees	= \$9,600.00

The Panel has assessed forum fees of \$4,800.00 to Claimant.  
The Panel has assessed forum fees of \$2,400.00 to Respondent DRI.  
The Panel has assessed forum fees of \$2,400.00 to Respondents UBS.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred in this matter.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 375.00
<u>Forum Fees</u>	= \$4,800.00
Total Fees	= \$5,175.00
<u>Less Payments</u>	= \$1,575.00
Balance Due NASD Dispute Resolution	= \$3,600.00

Respondent DRI is solely liable for:

Member Fees	= \$7,000.00
<u>Forum Fees</u>	= \$2,400.00
Total Fees	= \$9,400.00
<u>Less Payments</u>	= \$9,400.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent UBS is solely liable for:

Member Fees	= \$7,000.00
<u>Forum Fees</u>	= \$2,400.00
Total Fees	= \$9,400.00

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Less Payments = \$7,000.00

Balance Due NASD Dispute Resolution = \$2,400.00

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

**ARBITRATION PANEL**

Kendall P. Hill	-	Public Arbitrator, Presiding Chairperson
Donald M. Helton	-	Public Arbitrator
Charles E. Melancon, Jr.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
Kendall P. Hill  
Public Arbitrator, Presiding Chairperson

November 24, 2004  
Signature Date

/s/  
Donald M. Helton  
Public Arbitrator

November 23, 2004  
Signature Date

/s/  
Charles E. Melancon, Jr.  
Non-Public Arbitrator

November 23, 2004  
Signature Date

November 24, 2004  
Date of Service (For NASD Dispute Resolution office use only)

NOV. 22. 2004 7:42PM

NASD REGULATIONS

NO. 900 P. 6/6

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Arbitration No. 03-04399  
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Public Arbitrator, Presiding Chairperson

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

  
Donald M. Helton  
Public Arbitrator

11-23-04  
Signature Date

Charles E. Melancon, Jr.  
Non-Public Arbitrator

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

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**Award Page 5**

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**Concurring Arbitrators' Signatures**

Kendall P. Hill  
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Public Arbitrator, Presiding Chairperson

11/24/04  
Signature Date

Donald M. Helton  
Donald M. Helton  
Public Arbitrator

Signature Date

Charles E. Melancon, Jr.  
Charles E. Melancon, Jr.  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)