

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant  
Richard F. Piccolo

Case Number: 03-04566

Name of the Respondents  
UBS Financial Services, Inc. and  
Mary Zainey Townsend

Hearing Site: Indianapolis, Indiana

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**NATURE OF DISPUTE**

Customer vs. Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

Terry R. Curry, Esq. of the law firm Sommer Barnard Ackerson, P.C., located in Indianapolis, Indiana represented Richard F. Piccolo ("Piccolo"), hereinafter referred to as "Claimant."

John Jenkins, Esq., formerly in-house counsel for UBS Financial Services, Inc., now with the law firm John E. Jenkins, LLC, located in Westfield, New Jersey represented UBS Financial Services, Inc. ("UBS") and Mary Zainey Townsend ("Townsend"), hereinafter collectively referred to as "Respondents."

**CASE INFORMATION**

Statement of Claim filed on or about June 17, 2003. Claimant Piccolo signed the Uniform Submission Agreement on June 16, 2003.

Statement of Answer jointly filed by Respondents UBS and Townsend on October 17, 2003. Respondent UBS signed an undated Uniform Submission Agreement. Respondent Townsend also signed an undated Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty, omission of facts, suitability, failure to supervise, negligence, exchanges and misrepresentations. The causes of action relate to ING Reliastar FlexDesign Flexible Premium Variable Life. Claimant asserted that Reliastar was unsuitable to Claimant's investment needs and objectives.

Unless specifically admitted in its Answer, Respondents UBS and Townsend denied the allegations made in the Statement of Claim and asserted the following defenses:

1. The claims are barred by the applicable statute of limitations and doctrine of laches.
2. Claimant assumed the risk of the investments in and management of the Account.

3. Respondents made no misstatements of material fact upon which Claimant detrimentally relied.
4. Claimant has failed to mitigate any damages.
5. Respondent was not in a fiduciary relationship with Claimant relating to the claims made in this case.
6. The claims are barred by the doctrines of waiver and estoppel.
7. There is no basis of law, equity or the code of arbitration for an award of attorney's fees or punitive damages to Claimant.

#### **RELIEF REQUESTED**

Claimant Piccolo requested compensatory damages in the amount of \$79,170.64; rescission of his investment in the ReliaStar Account; interest calculated at 8% from December 1, 1999 to the date of judgment; treble damages; punitive damages in the amount of \$200,000.00; attorney's fees, cost of investigation and cost of arbitration.

Respondents UBS and Townsend requested that Claimant's Statement of Claim be dismissed in its entirety and the matter expunged from the NASD Central Registration Depository ("CRD") record of Respondent Townsend.

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

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, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, UBS Financial Services, Inc. and Mary Zainey Townsend, are jointly and severally liable for and shall pay to Claimant, Richard F. Piccolo, the sum of \$25,000.00 as compensatory damages.
2. Respondents, UBS Financial Services, Inc. and Mary Zainey Townsend, are jointly and severally liable for and shall pay to Claimant, Richard F. Piccolo, the sum of \$300.00 as reimbursement for the non-refundable NASD Dispute Resolution filing fee.
3. Respondents UBS Financial Services, Inc. and Mary Zainey Townsend, are jointly and severally liable for and shall pay to Claimant, Richard F. Piccolo, the sum of \$1,000.00 for Claimant's costs associated with this arbitration.
4. Except as specified herein, parties shall bear their own costs, including attorneys' fees.
5. Any and all relief not specifically addressed herein, including punitive damages, is denied.

### **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 = \$ 300.00

#### **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. Accordingly, UBS Financial Services, Inc. is a party and is assessed the following fees:

Member surcharge = \$1,700.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$2,750.00

#### **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, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

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

Pre-hearing conferences: February 10, 2004 1 session  
August 3, 2004 1 session

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

Hearing Dates: July 28, 2004 2 sessions  
July 29, 2004 2 sessions  
October 12, 2004 2 sessions

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Total Forum Fees = \$9,000.00

1. The Panel assessed 50% of the total forum fees in the amount of \$4,500.00 solely to Claimant, Richard F. Piccolo.
2. The Panel assessed 50% of the total forum fees in the amount of \$4,500.00 jointly and severally to Respondents UBS Financial Services, Inc. and Mary Zainey Townsend.

### **SEE SUMMARY**

1. Claimant Piccolo is solely liable for:

Initial Filing Fee = \$ 300.00  
Forum Fees = \$4,500.00  
Total Fees = \$4,800.00  
Less payments = \$1,425.00  
Balance Due NASD Dispute Resolution = \$3,375.00

2. Respondent, UBS Financial Services, Inc. is solely liable for:

Member Fees	= \$5,200.00
<u>Less payments</u>	<u>= \$5,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents UBS and Townsend are jointly and severally liable for:

Forum Fee	= \$4,500.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$4,500.00

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

**ARBITRATION PANEL**

Lawrence W. Arnese, Esq.	-	Public Arbitrator, Presiding Chairperson
Sharon B. Merriman, Esq.	-	Public Arbitrator
Joseph F. Touchton	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Lawrence W. Arnese, Esq.  
Public Arbitrator, Presiding Chairperson

\_\_\_\_\_  
10/14/04  
Signature Date

\_\_\_\_\_  
Sharon B. Merriman, Esq.  
Public Arbitrator

\_\_\_\_\_  
10/14/04  
Signature Date

\_\_\_\_\_  
Joseph Touchton  
Non-Public Arbitrator

\_\_\_\_\_  
10/15/04  
Signature Date

\_\_\_\_\_  
10/15/04  
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution  
Arbitration No. 03-04566  
Award Page 4

2. Respondent, UBS Financial Services, Inc. is solely liable for:

Member Fees	= \$5,200.00
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents UBS and Townsend are jointly and severally liable for:

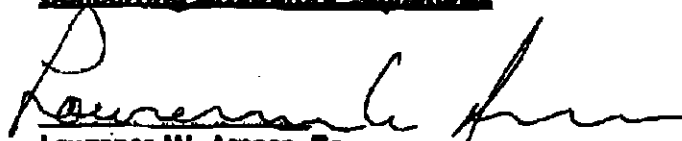
Forum Fee	= \$4,500.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$4,500.00

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ARBITRATION PANEL

Lawrence W. Amess, Esq.	-	Public Arbitrator, Presiding Chairperson
Sharon B. Merriman, Esq.	-	Public Arbitrator
Joseph F. Touchton	-	Non-Public Arbitrator

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Lawrence W. Amess, Esq.  
Public Arbitrator, Presiding Chairperson

10-14-04  
Signature Date

Sharon B. Merriman, Esq.  
Public Arbitrator

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Signature Date

Joseph Touchton  
Non-Public Arbitrator

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

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NASD Dispute Resolution  
 Arbitration No. 03-04556  
 Award Page 4

2. Respondent, UBS Financial Services, Inc. is solely liable for:

Member Fees	= \$5,200.00
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents UBS and Townsend are jointly and severally liable for:

Forum Fee	= \$4,500.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$4,500.00

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10/14/04  
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2. Respondent, UBS Financial Services, Inc. is solely liable for:

Member Fees	= \$5,200.00
<u>Less payments</u>	<u>= \$5,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents UBS and Townsend are jointly and severally liable for:

Forum Fee	= \$4,500.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$4,500.00

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10-15-2004  
Signature Date

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