

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

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In the Matter of the Arbitration Between

Claimant

Carol Young and John Gould, as Trustees  
of the Helen Gould Trust UAD 05/16/00

and

Case Number: 03-05674  
Hearing Site: Southfield, Michigan

Respondents

UBS Financial Services, Inc., and  
William H. Moeller

And

Respondent/Third-Party Claimant

UBS Financial Services, Inc.

v.

Third-Party Respondents

Carol Young and John Gould

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**NATURE OF DISPUTE**

Customer v. Member and Associated Persons and Member v. Customers

**REPRESENTATION OF PARTIES**

Carol Young and John Gould, as Trustees of the Helen Gould Trust UAD 05/16/00 ("Claimant" or "the Trust") and Carol Young and John Gould ("Third-Party Respondents") were represented by Anthony V. Trogan, Esq., and Lysa Postula-Stein, Esq., Anthony V. Trogan P.L.L.C., West Bloomfield, Michigan.

UBS Financial Services, Inc. f/k/a PaineWebber, Inc. ("UBS") and William H. Moeller ("Moeller"), hereinafter collectively referred to as "Respondents," were represented by David L. Goldberg, Esq., UBS Financial Services, Inc., New York, New York.

**CASE INFORMATION**

The Statement of Claim was filed on or about August 4, 2003. The Submission Agreement of the Helen Gould Trust UAD 05/16/00 was signed on or about August 14, 2003, by Carol Young as Trustee and on or about August 15, 2003, by John Gould as Trustee.

The Statement of Answer and Third-Party Claim was filed jointly by UBS and Moeller on or about October 16, 2003. The Submission Agreement of UBS was signed on or about October 7, 2003, by David L. Goldberg, Corporate V.P. The Submission Agreement of Moeller was signed on or about October 7, 2003.

The Statement of Answer to Third-Party Claim was filed jointly by Carol Young and John Gould on or about October 28, 2003.

Respondents filed Motion for Summary Judgment on or about December 20, 2004. Claimant filed a Response to the Motion on or about December 31, 2004.

### **CASE SUMMARY**

Claimant asserted the following legal theories in support of the claim: breach of contract, common law fraud, conspiracy, promissory estoppel, conversion, malpractice, breach of fiduciary duty, and breach of Michigan securities law. The causes of action relate to the purchase of AIM Balance Fund of America Class B, Bond Fund of America Class B, Eaton Vance Utilities Fund Class B, MFS Mass Investors Growth Stock Fund B, and Van Kampen Emerging Growth Fund.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim fails to state a claim upon which relief may be granted; Claimant's causes of action are barred by the doctrines of ratification, waiver and estoppel; and Claimants cannot demonstrate that Respondents acted with *scienter*.

Respondents asserted a Third-Party Claim for indemnification and contribution against the individual Trustees of the Trust.

Unless specifically admitted in their answer, Third-Party Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Third-Party Claim is not plead with sufficient specificity to permit a detailed response and should be stricken; the Third-Party Claim does not state a cause of action; and Third-Party Claimant/Respondent has no standing to bring the claim.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$105,000.00 in out-of-pocket damages, plus interest, costs, attorneys' fees, rescission, exemplary/punitive damages, and additional damages as allowed by the panel.

Respondents requested that the claims asserted against them be dismissed in their entirety and that they be awarded their costs, disbursements and all other proper relief. In its Third-Party Claim, UBS requested indemnification and contribution from the Trustees.

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

Third-Party Respondents, Carol Young and John Gould, did not file with NASD Dispute Resolution properly executed submissions to arbitration, but having answered the claim, and appeared and testified at the hearing are bound by the determination of the arbitration panel on all issues submitted.

The panel denied Respondents' Motion for Summary Judgment at the hearing.

At the hearing, Respondents moved for a directed verdict after the close of Claimant's case-in-chief. The panel granted the motion on the record.

UBS withdrew its Third-Party Claim on the record at the hearing.

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 original(s) remain on file with NASD Dispute Resolution ("NASD").

### **AWARD**

After considering the pleadings, the testimony, 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 denied and dismissed with prejudice;
- 2.) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent William H. Moeller's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent William H. Moeller must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
- 3.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 4.) Any relief not specifically enumerated, including punitive damages and attorney fees, is hereby denied with prejudice.

### **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
Third-Party Claim filing fee	= \$ 1,000.00

#### **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. In this matter, the member firm is UBS Financial Services, Inc.

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

#### **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 \$1,125.00	= \$ 1,125.00
Pre-hearing conference: April 30, 2004 1 session	
Three (3) Hearing sessions x \$1,125.00	= \$ 3,375.00
Hearing Dates: January 24, 2005 2 sessions	
January 25, 2005 1 session	
<hr/> Total Forum Fees	<hr/> = \$ 4,500.00

The Arbitration Panel has assessed \$2,250.00 of the forum fees to Carol Young and John Gould, as Trustees of the Helen Gould Trust UAD 05/16/00.

The Arbitration Panel has assessed \$2,250.00 of the forum fees to UBS Financial Services, Inc.

### **Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

Claimant was assessed an NSF fee = \$ 15.00

### **Fee Summary**

Carol Young and John Gould, as Trustees of the Helen Gould Trust UAD 05/16/00, are liable for:

Initial Filing Fee	= \$ 300.00
Administrative Costs	= \$ 15.00
Forum Fees	= \$ 2,250.00
<hr/> Total Fees	<hr/> = \$ 2,565.00
Less payments	= \$ 1,440.00
Balance Due NASD Dispute Resolution	= \$ 1,125.00

UBS Financial Services, Inc., is liable for:

Third-Party Claim Filing Fee	= \$ 1,000.00
Member Fees	= \$ 5,200.00
Forum Fees	= \$ 2,250.00
<hr/> Total Fees	<hr/> = \$ 8,450.00
Less payments	= \$ 6,700.00
Balance Due NASD Dispute Resolution	= \$ 1,750.00

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

**ARBITRATION PANEL**

Ruben Acosta, Esq. - Public Arbitrator, Presiding Chair  
Leonard R. Present - Public Arbitrator  
Dana R. Dawe - Non-Public Arbitrator

**Concurring Arbitrators:**

/s/ Ruben Acosta, Esq.  
Ruben Acosta, Esq.  
Public Arbitrator, Presiding Chair

01/25/05  
Signature Date

/s/ Leonard R. Present  
Leonard R. Present  
Public Arbitrator

01/25/05  
Signature Date

/s/ Dana R. Dawe  
Dana R. Dawe  
Non-Public Arbitrator

01/25/05  
Signature Date

01/25/05  
Date of Service (For NASD office use only)

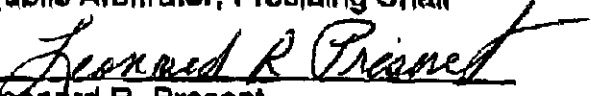
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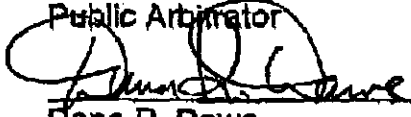
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