

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 04-00486

Charles B. and Elizabeth M. James

Name of the Respondent

Hearing Site: Charlotte, North Carolina

UBS Financial Services, Inc.

Nature of the Dispute: Customers vs. Member.

REPRESENTATION OF PARTIES

Claimants, Charles B. and Elizabeth M. James, hereinafter collectively referred to as "Claimants", were represented by Sarah G. Anderson, Esq., Clawson & Staubes, LLC, Charleston, South Carolina.

Respondent, UBS Financial Services, Inc., hereinafter referred to as "Respondent", was represented by Cory Hohnbaum, Esq., Kennedy Covington Lobdell & Hickman, LLP, Charlotte, North Carolina.

CASE INFORMATION

Statement of Claim filed on January 22, 2004.

Claimant Charles B. James signed the Uniform Submission Agreement on January 13, 2004.

Claimant Elizabeth M. James signed the Uniform Submission Agreement on January 12, 2004.

Statement of Answer filed by Respondent on March 18, 2004.

A representative of Respondent executed the Uniform Submission Agreement on March 11, 2004.

CASE SUMMARY

Claimants asserted the following causes of action, among others: unsuitability, violation of § 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934, common law fraud, negligence and recklessness, breach of fiduciary duty, breach of contract, unauthorized trading, *respondeat superior*, control person liability, failure to supervise, and violation of the South Carolina Securities Act. The causes of action relate to the purchase and sale of unspecified securities and a margin account.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to state a claim upon which relief may be granted, ratification, waiver, estoppel, assumption of risk, there is no independent cause of action for violation of NYSE or NASD rules, adequate supervisory

procedures were in place and followed, failure to mitigate, any losses were not the result of Respondent's actions, statute of limitations, and Claimants authorized all transactions.

RELIEF REQUESTED

Claimants in their Statement of Claim requested:

Compensatory Damages	\$230,500.00
Punitive Damages	amount unspecified
Interest	\$ 23,209.00
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified
Return of all commission and fees	amount unspecified

Respondent in its Statement of Answer requested that the claim be dismissed, that the costs be assessed against Claimants, and that the Panel enter such other and further relief as may be just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

At the conclusion of the hearing, Respondent made a Motion to Dismiss and for forum fees. The Panel denied said motion.

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.

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. The Panel finds that Respondent's negligence and failure to supervise were significant factors in Claimants' reckless and unsuitable trading practices, and in the failure to mitigate damages. Therefore, the Panel orders full disgorgement of commissions, partial disgorgement of margin interest, and reimbursement of certain of Claimants' expenses, as set forth below;
2. Respondent is liable to and shall pay to Claimants compensatory damages in the amount of \$42,000.00, plus simple interest at a rate of 5% per annum from 30 days after the date this Award is served until the date of payment in full;
3. Respondent is liable to and shall pay to Claimants attorneys' fees in the amount of \$28,000.00, pursuant to South Carolina Uniform Securities Act, §35-1-1490;
4. Respondent is liable to and shall pay to Claimants costs in the amount of \$4,844.00;

5. Respondent is liable to and shall pay to Claimants expert witness fees in the amount of \$10,462.00;
6. The parties shall bear their respective costs except as Fees are specifically addressed below; and
7. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

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 firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Respondent is a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00
Total Member Fees	= \$5,200.00

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(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 a single arbitrator @ \$450.00 = \$ 450.00

Pre-hearing conference: February 15, 2005 1 session

One (1) Pre-hearing session with Panel @ \$1,125.00 = \$ 1,125.00

Pre-hearing conference: August 20, 2004 1 session

Eight (8) Hearing sessions @ \$1,125.00 = \$ 9,000.00

Hearing Dates:	May 24, 2005	2 sessions
	May 25, 2005	2 sessions
	May 26, 2005	2 sessions
	June 13, 2005	2 sessions

Total Forum Fees = \$10,575.00

1. The Panel has assessed \$5,287.50 of the forum fees jointly and severally to Claimants
2. The Panel has assessed \$5,287.50 of the forum fees to Respondent.

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 not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. Respondent requested service of a speaker phone at the hearing = \$ 100.00

FEE SUMMARY

1. Claimants are jointly and severally assessed and shall pay the following fees:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 5,287.50
Total Fees	= \$ 5,587.50
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 4,162.50
2. Respondent is assessed and shall pay the following fees:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 5,287.50
Administrative Costs	= \$ 100.00
Total Fees	= \$10,587.50
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 5,387.50

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

ARBITRATION PANEL

- | | | |
|-------------------|---|--|
| Donald G. Kennedy | - | Public Arbitrator, Presiding Chairperson |
| N. John Garcia | - | Public Arbitrator, Panelist |
| Sidney L. Sussman | - | Non-Public Arbitrator, Panelist |

Concurring Arbitrators' Signatures

Donald G. Kennedy
Donald G. Kennedy
Public Arbitrator, Presiding Chairperson

June 22, 2005
Signature Date

N. John Garcia
Public Arbitrator, Panelist

Signature Date

Sidney L. Sussman
Non-Public Arbitrator, Panelist


Signature Date

6/23/05
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Donald G. Kennedy
Public Arbitrator, Presiding Chairperson

Signature Date



N. John Garcia
Public Arbitrator, Panelist

6-21-05

Signature Date

Sidney L. Sussman
Non-Public Arbitrator, Panelist

Signature Date

6/23/05

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

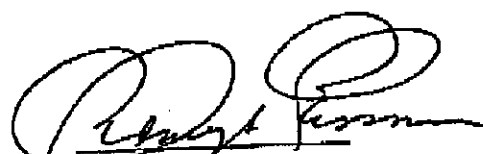
Concurring Arbitrators' Signatures

Donald G. Kennedy
Public Arbitrator, Presiding Chairperson

Signature Date

N. John Garcia
Public Arbitrator, Panelist

Signature Date



Sidney L. Sussman
Non-Public Arbitrator, Panelist

6/22/05

Signature Date

6/23/05

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