

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

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In the Matter of the Arbitration Between:

Thomas D. Wittkopf and Marie T. Wittkopf (Claimants) v. UBS Financial Services, Inc. f/k/a UBS PaineWebber, Inc. and Howard Pirwitz (Respondents)

Case Number: 04-01017

Hearing Site: Columbus, Ohio

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

**REPRESENTATION OF PARTIES**

Claimants Thomas D. Wittkopf ("T. Wittkopf") and Marie T. Wittkopf ("M. Wittkopf") hereinafter collectively referred to as "Claimants": Jeffrey M. Lewis, Esq., Swedlow, Butler, Lewis, Madison & Dye Co., LPA, Columbus, OH.

Respondent UBS Financial Services, Inc. f/k/a UBS PaineWebber, Inc. ("UBS"): David L. Goldberg, Esq., UBS Financial Services, Inc., New York, NY.

Respondent Howard Pirwitz ("Pirwitz") appeared *pro se*. Previously represented by: David L. Goldberg, Esq., UBS Financial Services, Inc., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: February 12, 2004.

Claimants signed the Uniform Submission Agreement: January 2, 2004.

Joint Statement of Answer and Motion to Dismiss filed by Respondents on or about: April 29, 2004.

Respondent UBS signed the Uniform Submission Agreement: April 28, 2004.

Respondent Pirwitz did not sign the Uniform Submission Agreement.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of express or implied contract; negligent supervision; misrepresentation; misleading omissions; failure to disclose; breach of fiduciary duty; failure to supervise; failure to know customer; unsuitability; unjust enrichment; conversion; and promissory estoppel. The causes of action relate to annuities.

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

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$400,000.00; punitive damages; costs; expenses; attorneys' fees; and such other relief to which they may be entitled.

Respondents requested that Claimants' claims be dismissed; and costs.

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

Respondent Pirwitz did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim, is bound by the determination of the Panel on all issues submitted.

On or about May 17, 2004, NASD Dispute Resolution was notified that Claimants removed Respondent Pirwitz as a named party to the arbitration. At the start of the hearing Claimants acknowledged Pirwitz was not a party.

At the start of the hearing in this matter, Respondent filed a Motion for Summary Judgment. The Panel denied the motion. At the conclusion of Claimants' testimony, Respondent filed a Motion for Summary Judgment. The Panel denied the Motion. At the conclusion of Claimants' case, Respondent filed a Motion for Summary Judgment. The Panel denied the 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. Respondent UBS is liable for and shall pay to Claimants compensatory damages in the amount of \$60,701.00.
2. Respondent UBS is liable for and shall pay to Claimants interest at the statutory rate with interest commencing thirty days after the entry of the award until the award is paid in full.
3. 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.

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 arbitrators, including a pre-hearing conference with the arbitrators, 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: March 31, 2005 1 session	

One (1) Pre-hearing session with Panel @ \$1,125.00	= \$1,125.00
Pre-hearing conference: January 10, 2005 1 session	

Seven (7) Hearing sessions @ \$1,125.00	= \$7,875.00
Hearing Dates: May 17, 2005 2 sessions	
May 18, 2005 2 sessions	
May 19, 2005 3 sessions	

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Total Forum Fees	= \$9,450.00
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1. The Panel has assessed \$4,725.00 of the forum fees against Claimants
2. The Panel has assessed \$4,725.00 of the forum fees against Respondent UBS.

### **Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$4,725.00
Total Fees	= \$5,025.00
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$3,600.00

2. Respondent UBS is solely liable for:

Member Fees	= \$5,200.00
Forum Fees	= \$4,725.00
Total Fees	= \$9,925.00
Less payments	= \$5,200.00

Balance Due NASD Dispute Resolution

= \$4,725.00

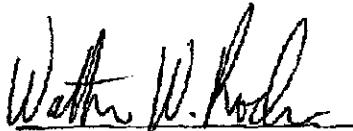
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Walter W. Kocher	-	Public Arbitrator, Presiding Chairperson
David C. Young, Esq.	-	Public Arbitrator
Robert P. Weisberger	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Walter W. Kocher  
Public Arbitrator, Presiding Chairperson

8/10/05  
Signature Date

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David C. Young, Esq.  
Public Arbitrator

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Signature Date

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Robert P. Weisberger  
Non-Public Arbitrator

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Signature Date

June 6, 2005  
Date of Service (For NASD Dispute Resolution use only)


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David C. Young, Esq.  
Public Arbitrator

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6/3/05  
Signature Date

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