
Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Violet V. Garry-Chiulli, individually and on behalf
of the Violet V. Garry IRA Rollover Account

Case Number: 04-01201

Names of the Respondents

UBS Financial Services, Inc.
Arthur S. Day

Hearing Site: Tampa, Florida

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

REPRESENTATION OF PARTIES

For Violet V. Garry-Chiulli, individually and on behalf of the Violet V. Garry IRA Rollover Account, hereinafter referred to as "Claimant": W. Andrew Clayton, Jr., Esq., Browning, Clayton & Krawetz, Sarasota, Florida.

For UBS Financial Services, Inc. ("UBS") and Arthur S. Day ("Day"), hereinafter collectively referred to as "Respondents": Rebecca E. Swenson, Esq., Associate General Counsel, UBS Financial Services, Inc., Fort Lauderdale, Florida.

CASE INFORMATION

Statement of Claim filed on or about: February 13, 2004.

Claimant signed the Uniform Submission Agreement: February 23, 2004.

Statement of Answer filed by Respondents on or about: May 7, 2004.

Respondent UBS signed the Uniform Submission Agreement: March 15, 2004.

Respondent Day did not file an executed Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: 1) violation of Florida Securities Act; 2) equitable rescission; 3) breach of fiduciary duty; 4) negligence; 5) breach of contract; 6) fraud; and, 7) negligent misrepresentation. The causes of action relate to the purchase and sale of various equities and equity mutual funds in Claimant's accounts, including, but not limited to, PW Strategy Fund/Brinson Strategy Fund Class B, Orbitex Info-Tech & Comm Fund Class C, Orbitex Health & Biotech Fund Class C and the Federated Kaufman Fund Class C.

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

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$160,239.00, attorneys' fees, expectation losses, costs and such further relief as this Panel deemed just and equitable.

Respondents requested that the Statement of Claim be dismissed in its entirety and an award of such other and further relief as this Panel deemed just and proper, including assessment of all forum fees against Claimant. Additionally, Respondents stated their intent to seek attorney's fees pursuant to Florida Statutes, Section 517.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Day did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and is bound by the determination of the Panel on all issues submitted.

On February 2, 2005, the parties notified NASD Dispute Resolution that they had settled this matter and that they would be submitting a proposed Stipulated Award.

On February 17, 2005, the parties submitted to NASD Dispute Resolution a Joint Motion for Entry of a Stipulated Award with a proposed Stipulated Award and a request for expungement of the NASD Central Registration Depository (the "CRD") record of Respondent Day.

The parties requested the entry of a Stipulated Award, dismissing this matter, with prejudice and expunging the CRD record of Respondent Day. In support of this request, the parties stated that the instant arbitration was filed prior to the effective date of NASD Rule 2130; that the parties have settled all claims and disputes arising out of or relating to this arbitration and Claimant has agreed to dismissal of all their claims against Respondents. In addition, the parties stated that the Claimant does not oppose the entry of the Stipulated Award.

The parties have agreed that the Stipulated Award in this matter may be entered in counterpart copies or that a signed handwritten Stipulated Award may be entered.

AWARD

After considering the pleadings, the Joint Motion for Entry of a Stipulated Award and the proposed Stipulated Award with request for expungement, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimant's withdrawal of her claims against Respondents is accepted and Respondents are dismissed from this matter, with prejudice.

The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Day's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Day must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

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, Respondent UBS is a party to this dispute and was a member of NASD at the time the following fees were assessed:

Member surcharge = \$ 1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 2,750.00

Adjournment Fees

No requests for adjournments were filed in this matter.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No cancellation fees were assessed in this matter.

Injunctive Relief Fees

No injunctive relief fees were incurred during this proceeding.

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:

No hearings were held for this matter.

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.

No administrative costs were incurred during this proceeding.

Fee Summary

Claimant is solely liable for:

| | |
|-------------------------------------|-------------|
| <u>Initial Filing Fee</u> | = \$ 300.00 |
| <u>Total Fees</u> | = \$ 300.00 |
| <u>Less payments</u> | = \$ 300.00 |
| Balance Due NASD Dispute Resolution | = \$ 0.00 |

Respondent UBS is solely liable for:

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

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

ARBITRATION PANEL

| | | |
|---------------------------|---|---|
| <i>George Felos, Esq.</i> | - | <i>Public Arbitrator, Presiding Chairperson</i> |
| <i>Thomas G. Moore</i> | - | <i>Public Arbitrator</i> |
| <i>John R. Main</i> | - | <i>Non-Public Arbitrator</i> |

Concurring Arbitrators' Signatures

/s/
George Felos, Esq.
Public Arbitrator, Presiding Chairperson

04/01/05
Signature Date

/s/
Thomas G. Moore
Public Arbitrator

03/03/05
Signature Date

/s/
John R. Main
Non-Public Arbitrator

02/23/05
Signature Date

04/01/05
Date of Service (For NASD Dispute Resolution office use only)

FROM : NASD

FAX NO. : 5614474515

Apr. 01 2025 02:11PM PS

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 Arbitration No. 04-01201
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| | |
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ARBITRATION PANEL

George Felos, Esq.
 Thomas G. Moore
 John R. Main

Public Arbitrator, Presiding Chairperson
 Public Arbitrator
 Non-Public Arbitrator

Concurring Arbitrators' Signatures


 George Felos, Esq.
 Public Arbitrator, Presiding Chairperson

4/1/05
 Signature Date

Thomas G. Moore
 Public Arbitrator

Signature Date

John R. Main
 Non-Public Arbitrator

Signature Date

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

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Concurring Arbitrators' Signatures

George Felos, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Thomas G. Moore
Public Arbitrator

 3-2-05

Signature Date

John R. Main
Non-Public Arbitrator

Signature Date

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

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| <i>John R. Main</i> | - | <i>Non-Public Arbitrator</i> |

Concurring Arbitrators' Signatures

George Felos, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Thomas G. Moore
Public Arbitrator

Signature Date

John R. Main

John R. Main
Non-Public Arbitrator

2/23/05

Signature Date

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