

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

---

In the Matter of the Arbitration Between:

Name of the Claimant

Case Number: 04-01441

Ted Stroupe

Names of the Respondents

Hearing Site: Charlotte, North Carolina

UBS Financial Services, Inc.  
Banc of America Investment Services, Inc.  
Harold Francis Gallivan, III  
James Woodrow Gillespie, III

---

Nature of the Dispute: Customer vs. Members and Associated Persons.

REPRESENTATION OF PARTIES

Claimant Ted Stroupe, hereinafter referred to as "Claimant", was represented by Lynn Williams, Esq., and A. Daniel Woska, Esq., Woska & Hayes, LLP, Oklahoma City, Oklahoma.

Respondent UBS Financial Services, Inc. ("UBS") was represented by Rebecca E. Swenson, Esq., UBS Financial Services, Inc., Fort Lauderdale, Florida.

Respondent Banc of America Investment Services, Inc. ("Banc of America") and James Woodrow Gillespie, III ("Gillespie") were represented by William O. L. Hutchinson, Esq., Kennedy Covington Lobdell & Hickman, L.L.P., Charlotte, North Carolina.

Respondent Harold Francis Gallivan, III ("Gallivan") was represented by John F. Beach, Esq., Ellis Lahorne & Sims, P.A., Columbia, South Carolina.

CASE INFORMATION

Statement of Claim filed on March 26, 2004.

Amended Statement of Claim filed on June 9, 2004.

Claimant signed the Uniform Submission Agreement on June 9, 2004.

Statement of Answer filed by Respondents UBS and Gallivan on May 28, 2004.

A representative of Respondent UBS executed the Uniform Submission Agreement on April 22, 2004.

Respondent Gallivan signed the Uniform Submission Agreement on August 23, 2004.

Respondents Banc of America and Gillespie filed their Statement of Answer on October 18, 2004.

Respondent Gillespie signed the Uniform Submission Agreement on October 14, 2004.

A representative of Respondent Banc of America executed an undated Uniform Submission Agreement.

Respondents UBS and Gallivan filed a Motion to Dismiss, Request for Order of Expungement and Request for Enforcement of Indemnification Agreement on July 11, 2005.

Claimant filed a Response to Respondents' Motion to Dismiss on July 21, 2005. Respondents UBS and Gallivan filed a Reply in Further Support of the Motion to Dismiss, Request for Order of Expungement and Request for Enforcement of Indemnification Agreement on July 19, 2005.

### CASE SUMMARY

Claimant asserted the following causes of action, among others: breach of fiduciary duty, breach of contract, violation of the "know your customer" rule, unsuitability, failure to supervise, violations of the securities laws, unauthorized trading, and failure to hedge. The causes of action relate to the purchase and sale of various securities.

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

### RELIEF REQUESTED

Claimant in his Amended Statement of Claim requested compensatory damages in the amount of \$175,000.00, punitive damages, interest, attorneys' fees and costs.

Respondents UBS and Gallivan in their Statement of Answer requested that the Statement of Claim be dismissed, that all costs be assessed against Claimant, and that Respondent Gallivan's records maintained by the CRD be expunged.

Respondents Banc of America and Gillespie in their Statement of Answer requested that the Statement of Claim be dismissed, that all costs be assessed against Claimant, and all further relief the Panel deems just and proper.

### OTHER ISSUES CONSIDERED AND DECIDED

By Order dated August 10, 2005, the Panel deferred ruling on Respondents' Motion to Dismiss, Request for Order of Expungement and Request for Enforcement of Indemnification Agreement until after the evidentiary hearing scheduled for September 20, 2005.

Prior to the hearing, the Parties fully and finally settled all claims by and between them. The Parties have now jointly moved that the Panel consider and grant a proposed stipulated award dismissing the Statement of Claim with prejudice and entering an order pursuant to NASD Notice to Members 99-09 directing the NASD to expunge all

references to this matter from the CRD records of Respondents Gallivan and Gillespie. The Panel subsequently granted the Parties' request to consider the Parties' Stipulated Award. Therefore, the Parties submit this Stipulated Award to the Panel for its consideration and request that it be entered.

The parties have agreed that the Stipulated Award in this matter may be executed in counterpart copies.

### AWARD

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

1. All claims against Respondents are hereby dismissed with prejudice;
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents Gallivan and Gillespie's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Gallivan and Gillespie must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and
4. 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 UBS and Banc of America is a party.

Respondent UBS's Member Fees:

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

Respondent Banc of America's Member Fees:

Member surcharge	= \$	1,700.00
Pre-hearing process fee	= \$	750.00
<u>Hearing process fee</u>	= \$	<u>2,750.00</u>
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:

Three (3) Pre-hearing sessions with Panel @ \$1,125.00	= \$	3,375.00
Pre-hearing conferences: November 24, 2004 1 session		
August 10, 2005 1 session		
June 29, 2006 1 session		
<u>Total Forum Fees</u>	= \$	<u>3,375.00</u>

1. The Panel has assessed \$1,687.50 of the forum fees to Claimant.
2. The Panel has assessed \$1,687.50 of the forum fees jointly and severally to Respondents.

FEE SUMMARY

1. Claimant is assessed and shall pay the following fees:

Initial Filing Fee	= \$	300.00
Forum Fees	= \$	1,687.50
<u>Total Fees</u>	= \$	<u>1,987.50</u>
<u>Less payments</u>	= \$	<u>1,425.00</u>
Balance Due NASD Dispute Resolution	= \$	562.50

2. Respondent UBS is assessed and shall pay the following fees:

<u>Member Fees</u>	= \$	<u>5,200.00</u>
<u>Total Fees</u>	= \$	<u>5,200.00</u>
<u>Less payments</u>	= \$	<u>6,325.00</u>
Refund Paid to Respondent	= \$	1,125.00

3. Respondent Banc of America is assessed and shall pay the following fees:

<u>Member Fees</u>	= \$	5,200.00
<u>Total Fees</u>	= \$	5,200.00
<u>Less payments</u>	= \$	7,450.00
<u>Refund Paid to Respondent</u>	= \$	2,250.00

4. Respondents are jointly and severally assessed and shall pay the following fees:

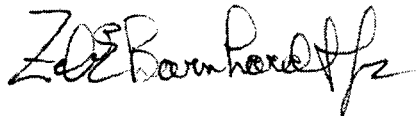
<u>Forum Fees</u>	= \$	1,687.50
<u>Total Fees</u>	= \$	1,687.50
<u>Less payments</u>	= \$	1,125.00
<u>Balance Due NASD Dispute Resolution</u>	= \$	562.50

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

ARBITRATION PANEL

Zeb E. Barnhardt, Jr., Esq.	-	Public Arbitrator, Presiding Chairperson
Benjamin F. Richards, Jr.	-	Public Arbitrator, Panelist
Calvin D. Cevaai	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures



\_\_\_\_\_  
Zeb E. Barnhardt, Jr., Esq.  
Public Arbitrator, Presiding Chairperson

July 20, 2006  
Signature Date

\_\_\_\_\_  
Benjamin F. Richards, Jr.  
Public Arbitrator, Panelist

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

\_\_\_\_\_  
Calvin D. Ceva  
Non-Public Arbitrator, Panelist

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

September 29, 2006  
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Zeb E. Barnhardt, Jr., Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

*Benjamin F. Richards, Jr.*

Benjamin F. Richards, Jr.  
Public Arbitrator, Panelist

9/22/06  
Signature Date

Calvin D. Ceva  
Non-Public Arbitrator, Panelist

Signature Date

September 29, 2006  
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Zeb E. Barnhardt, Jr., Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

Benjamin F. Richards, Jr.  
Public Arbitrator, Panelist

Signature Date

Calvin D. Cevaai  
Calvin D. Cevaai  
Non-Public Arbitrator, Panelist

9/28/06  
Signature Date

September 29, 2006  
Date of Service (For NASD Dispute Resolution office use only)