

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

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In the Matter of the Arbitration Between

Claimant

Miriam C. Olson

v.

04-01454

Minneapolis, Minnesota

Respondents

UBS PaineWebber, Inc. and Robert C. Knutson, Jr.

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Nature of Dispute: Customer v. Member and Associated Person

**REPRESENTATION OF PARTIES**

Miriam C. Olson ("**Claimant**") was represented by Stephen P. Kelley, Esq., of Mackall, Crounse & Moore, PLC, Minneapolis, Minnesota.

UBS PaineWebber, Inc. ("**UBS**") and Robert C. Knutson, Jr. ("**Knutson**"), hereinafter referred to as ("**Respondents**"), were represented by Terrance C. Flemming, Esq., of Lindquist & Vennum, P.L.L.P., Minneapolis, Minnesota.

**CASE INFORMATION**

The Statement of Claim was filed on or about March 2, 2004. The Submission Agreement of Claimant was signed on or about February 10, 2004.

A Joint Statement of Answer was filed by Respondents, UBS PaineWebber, Inc. and Robert C. Knutson, Jr., on or about May 10, 2004. The Submission Agreement of Respondent, UBS PaineWebber, Inc., was signed on or about May 10, 2004 by Kenneth G. Crowley, Vice President UBS Paine Webber, Inc. The Submission Agreement of Respondent, Robert C. Knutson, Jr., was signed on or about May 10, 2004.

Claimant filed a Motion for Order Disqualifying Lindquist & Vennum P.L.L.P. as Counsel for Respondents on or about August 13, 2004.

Respondents submitted a Memorandum in Opposition to Claimant's Motion for Order Disqualifying Lindquist & Vennum P.L.L.P. as Counsel for Respondents on or about August 30, 2004.

### **CASE SUMMARY**

Claimant asserted causes of action including the following: breach of fiduciary duty, common law fraud, suitability, breach of contract and failure to supervise. The causes of action related to Claimant's allegation that Respondents improperly invested her in various unspecified securities, which according to Claimant were unsuitable. Claimant asserted that Knutson churned her account to increase his commission income and fraudulently updated her customer profile and changed her investment objectives without authorization. Claimant also alleged that due to change in investment objectives, Knutson was able to churn her account resulting in high margin loan balances and substantial tax liabilities.

Respondents denied the allegations set forth in the Statement of Claim and asserted defenses including the following: Claimant's securities law claims are time-barred under the Minnesota Securities Act by the three-year statute of limitations applicable to such claims; Claimant's causes of action are barred by the doctrines of laches, ratification waiver and estoppel; Claimant cannot demonstrate the Respondents acted with the requisite scienter; Claimant expressly and implicitly represented to the Respondents that she understood the nature and risks of the securities purchased in her accounts; and the transactions in Claimant's accounts were entirely consistent with her investment objectives and were suitable in light of the Claimant's financial condition, investment history and communication with Respondents.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of unspecified compensatory damages, plus punitive damages, attorney's fees, costs, interest and any other relief the panel deemed just and equitable.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. In addition, Respondents requested that this matter be expunged from Robert C. Knutson, Jr.'s permanent registration records maintained by the Central Registration Depository ("CRD").

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

Claimant withdrew her Motion for Order Disqualifying Lindquist & Vennum P.L.L.P. as Counsel for Respondents on or about November 3, 2004.

After Claimant and Respondents presented their cases-in-chief and after considering the evidence presented, the Panel has made the following finding of fact: All claims asserted by Claimant arising out of transactions prior to March 1, 2001, are time barred and are denied in their entirety based upon federal and state statutes of limitations.

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 originals remain on file with NASD Dispute Resolution ("NASD").

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing, and post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, UBS PaineWebber, Inc. and Robert C. Knutson, Jr., are jointly and severally liable for and shall pay to Claimant, Miriam C. Olson, the sum of Three Thousand Three Hundred Forty Three Dollars and Eighty Six Cents (\$3,343.86) as compensatory damages;
2. Respondents, UBS PaineWebber, Inc. and Robert C. Knutson, Jr., are jointly and severally liable for and shall pay to Claimant, Miriam C. Olson, the sum of Fifteen Thousand Dollars and No Cents (\$15,000.00) in attorney's fees pursuant to Minn Stat. 80A;
3. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, including punitive damages and expungement, are denied with prejudice; and
4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys' fees unless otherwise provided for above.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee = \$ 250

#### **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 PaineWebber, Inc.

|                         |            |
|-------------------------|------------|
| Member surcharge        | = \$ 1,500 |
| Pre-hearing process fee | = \$ 750   |
| Hearing process fee     | = \$ 2,200 |

### **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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

|  |            |
|--|------------|
| Two (2) Pre-hearing sessions with Panel x \$ 1,000 | = \$ 2,000 |
|--|------------|

|                          |            |           |
|--------------------------|------------|-----------|
| Pre-hearing conferences: | 08/24/2004 | 1 session |
|                          | 11/03/2004 | 1 session |

|  |            |
|--|------------|
| Seven (7) Hearing sessions with Panel x \$ 1,000 | = \$ 7,000 |
|--|------------|

|                |            |            |
|----------------|------------|------------|
| Hearing Dates: | 12/02/2004 | 2 sessions |
|                | 12/03/2004 | 2 sessions |
|                | 12/06/2004 | 3 sessions |

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|                  |            |
|------------------|------------|
| Total Forum Fees | = \$ 9,000 |
|------------------|------------|

The Arbitration Panel has assessed \$ 4,500 of the forum fees to Miriam C. Olson.

The Arbitration Panel has assessed \$ 4,500 of the forum fees jointly and severally to UBS PaineWebber, Inc. and Robert C. Knutson, Jr.

### **Fee Summary**

Claimant, Miriam C. Olson, is liable for:

|                                     |            |
|-------------------------------------|------------|
| Initial Filing Fee                  | = \$ 250   |
| Forum Fees                          | = \$ 4,500 |
| Total Fees                          | = \$ 4,750 |
| Less payments                       | = \$ 1,425 |
| Balance Due NASD Dispute Resolution | = \$ 3,325 |

Respondent, UBS PaineWebber, Inc., is liable for:

|                                     |            |
|-------------------------------------|------------|
| Member Fees                         | = \$ 4,450 |
| Total Fees                          | = \$ 4,450 |
| Less payments                       | = \$ 4,450 |
| Balance Due NASD Dispute Resolution | = \$ 0     |

Respondents, UBS PaineWebber, Inc. and Robert C. Knutson, Jr., are jointly and severally liable for:

|                                     |            |
|-------------------------------------|------------|
| Forum Fees                          | = \$ 4,500 |
| Total Fees                          | = \$ 4,500 |
| Less payments                       | = \$ 0     |
| Balance Due NASD Dispute Resolution | = \$ 4,500 |

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

**ARBITRATION PANEL**

James A. Lundberg, Esq. - Public Arbitrator, Presiding Chair  
Maximillion M. Wexler - Public Arbitrator  
Edward C. Oliver- Non-Public Arbitrator

Concurring Arbitrators:

\_\_\_\_\_  
James A. Lundberg, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Maximillion M. Wexler  
Public Arbitrator

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

\_\_\_\_\_  
Edward C. Oliver  
Non-Public Arbitrator

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

12/10/04  
\_\_\_\_\_  
Date of Service (NASD use only)

Respondent, UBS PaineWebber, Inc., is liable for:

|  |            |
|--|------------|
| <u>Member Fees</u>                         | = \$ 4,450 |
| <u>Total Fees</u>                          | = \$ 4,450 |
| <u>Less payments</u>                       | = \$ 4,450 |
| <u>Balance Due NASD Dispute Resolution</u> | = \$ 0     |

Respondents, UBS PaineWebber, Inc. and Robert C. Knutson, Jr., are jointly and severally liable for:

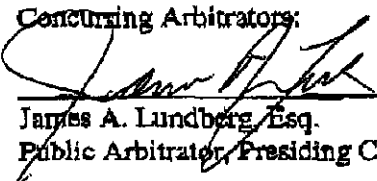
|  |            |
|--|------------|
| <u>Forum Fees</u>                          | = \$ 4,500 |
| <u>Total Fees</u>                          | = \$ 4,500 |
| <u>Less payments</u>                       | = \$ 0     |
| <u>Balance Due NASD Dispute Resolution</u> | = \$ 4,500 |

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Edward C. Oliver - Non-Public Arbitrator

Concurring Arbitrators:

  
James A. Lundberg, Esq.  
Public Arbitrator, Presiding Chair

12/9/2007  
Signature Date

\_\_\_\_\_  
Maximillion M. Wexler  
Public Arbitrator

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

\_\_\_\_\_  
Edward C. Oliver  
Non-Public Arbitrator

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Signature Date

12/10/07  
Date of Service (NASD use only)

NASD Dispute Resolution  
Arbitration No. 04-01454  
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Public Arbitrator, Presiding Chair

Maximillion M. Wexler  
Public Arbitrator

Signature Date

Signature Date

Edward C. Oliver  
Non-Public Arbitrator

Signature Date

12/10/04  
Date of Service (NASD use only)

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| <u>Total Fees</u>                          | = \$ 4,450 |
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| <u>Less payments</u>                       | = \$ 0     |
| <u>Balance Due NASD Dispute Resolution</u> | = \$ 4,500 |

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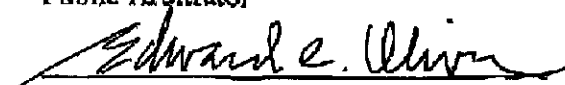
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James A. Lundberg, Esq.  
Public Arbitrator, Presiding Chair

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12-10-04  
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