

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

---

In the Matter of the Arbitration Between

Claimant

Rose Marie Hartshorn

v.

04-02869  
Denver, Colorado

Respondents

UBS Financial Services, Inc. and James M. Olson

---

Nature of Dispute: Customer v. Member and Associated Person

**REPRESENTATION OF PARTIES**

Rose Marie Hartshorn ("Claimant") was represented by Jack M. Merritts, Esq., of Burns, Wall, Smith and Mueller, P.C., Denver, Colorado.

UBS Financial Services, Inc. ("UBS") and James M. Olson ("Olson"), hereinafter referred to as "Respondents," were represented by Andrew R. Shoemaker, Esq., of Hogan & Hartson, L.L.P., Boulder, Colorado.

**CASE INFORMATION**

The Statement of Claim was filed on or about April 16, 2004. The Submission Agreement of Claimant was signed on or about April 9, 2004.

The Statement of Answer was filed jointly by Respondents, UBS Financial Services, Inc. and James M. Olson, on or about June 9, 2004. The Submission Agreement of Respondent, UBS Financial Services, Inc., was signed on or about June 9, 2004.

Respondents, UBS Financial Services, Inc. and James M. Olson, filed a Partial Motion to Dismiss on or about June 9, 2004. Claimant filed a Response on or about July 9, 2004. Respondents, UBS Financial Services, Inc. and James M. Olson, submitted a Reply in Support of their Partial Motion to Dismiss on or about October 18, 2004.

**CASE SUMMARY**

Claimant asserted causes of action including the following: breach of contract; breach of the implied covenant of good faith and fair dealing; negligence; breach of fiduciary duty; fraud and conversion. The causes of action related to Claimant's allegation that Respondents recommended and purchased various unspecified unsuitable investments and permitted her investments to be made on margin,

which, according to Claimant, were inconsistent with her economic circumstances, investment experience, investment objectives and risk profile. Claimant also alleged that Respondents churned her account, and the excessive trading as well as the debt accumulation resulting from the margin account decreased the value of her investments.

Respondents denied the allegations set forth in the Statement of Claim and asserted affirmative defenses including the following: Claimant failed to state a claim upon which relief can be granted; Claimant's causes of action are barred, in whole or in part, by the doctrines of ratification, waiver, laches, unclean hands and estoppel; Claimant expressly and implicitly represented to Respondents that she understood the nature and risk of the securities she and her agent purchased from Respondents; the transactions complained of in the Statement of Claim were duly authorized by Claimant, who, at all times, was in sole control of her brother/agent and the assets in her accounts; UBS, and its officers, agents and employees, in discharging their duties, acted in good faith and exercised the degree of care, diligence and skill which a prudent person would exercise in similar circumstances and like positions; and the trading in Claimant's accounts was appropriate based on the representations made by the Claimant and her representative.

#### **RELIEF REQUESTED**

Claimant requested an award of \$450,000 in compensatory damages, plus \$450,000 in punitive damages, interest, attorneys' fees, costs and any other relief the panel deemed just and proper.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

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

On or about October 25, 2004, the panel entered an Order granting Respondents, UBS Financial Services, Inc. and James M. Olson's Partial Motion to Dismiss as to Claimant's Sixth Claim for Relief (Conversion/Theft), but denied the remainder of Respondents' Motion.

Respondent, James M. Olson, did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and is bound by the determination of the arbitration panel on all issues submitted.

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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, UBS Financial Services, Inc. and James M. Olson, are jointly and severally liable for and shall pay to Claimant, Rose Marie Hartshorn, the sum of Thirty Five Thousand Six Hundred Sixteen Dollars and No Cents (\$35,616.00) in compensatory damages.
2. 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, are denied with prejudice; and
3. 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.

### **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 = \$ 375

#### **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 Financial Services, Inc.

Member surcharge = \$ 2,250  
Pre-hearing process fee = \$ 750  
Hearing process fee = \$ 4,000

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

One (1) Pre-hearing session with the Chairperson x \$ 450	= \$ 450
Pre-hearing conference: 02/10/2005 1 session	
Two (2) Pre-hearing sessions with Panel x \$ 1,200	= \$ 2,400
Pre-hearing conferences: 10/11/2004 1 session	
10/25/2004 1 session	
Six (6) Hearing sessions with Panel x \$ 1,200	= \$ 7,200
Hearing Dates: 03/07/2005 1 session	
03/08/2005 2 sessions	
03/09/2005 2 sessions	
03/10/2005 1 session	
Total Forum Fees	= \$ 10,050

The Arbitration Panel has assessed \$ 5,025 of the forum fees to Rose Marie Hartshorn.

The Arbitration Panel has assessed \$ 5,025 of the forum fees jointly and severally to UBS Financial Services, Inc. and James M. Olson.

**EEE SUMMARY**

Claimant, Rose Marie Hartshorn, is liable for:

Initial Filing Fee	= \$ 375
Forum Fees	= \$ 5,025
Total Fees	= \$ 5,400
Less payments	= \$ 1,575
Balance Due NASD Dispute Resolution	= \$ 3,825

Respondent, UBS Financial Services, Inc., is liable for:

<u>Member Fees</u>	= \$ 7,000
<u>Total Fees</u>	= \$ 7,000
<u>Less payments</u>	= \$ 7,000
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0

Respondents, UBS Financial Services, Inc. and James M. Olson, are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 5,025
<u>Total Fees</u>	= \$ 5,025
<u>Less payments</u>	= \$ 0
<u>Balance Due NASD Dispute Resolution</u>	= \$ 5,025

**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**

Gerald Raskin, Esq. - Public Arbitrator, Presiding Chair  
Robert D. Greenlee - Public Arbitrator  
Jerome C. Zackroff - Non-Public Arbitrator

Concurring Arbitrators:

\_\_\_\_\_  
Gerald Raskin, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Robert D. Greenlee  
Public Arbitrator

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

\_\_\_\_\_  
Jerome C. Zackroff  
Non-Public Arbitrator

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

2/12/15  
\_\_\_\_\_  
Date of Service (NASD use only)

Respondent, UBS Financial Services, Inc., is liable for:

Member Fees	= \$ 7,000
Total Fees	= \$ 7,000
Less payments	= \$ 7,000
Balance Due NASD Dispute Resolution	= \$ 0

Respondents, UBS Financial Services, Inc. and James M. Olson, are jointly and severally liable for:

Forum Fees	= \$ 5,025
Total Fees	= \$ 5,025
Less payments	= \$ 0
Balance Due NASD Dispute Resolution	= \$ 5,025

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**

Gerald Raskin, Esq. - Public Arbitrator, Presiding Chair  
Robert D. Greenlee - Public Arbitrator  
Jerome C. Zakroff - Non-Public Arbitrator

Concurring Arbitrators:

  
Gerald Raskin, Esq.  
Public Arbitrator, Presiding Chair

3/17/05  
Signature Date

Robert D. Greenlee  
Public Arbitrator

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

  
Jerome C. Zakroff  
Non-Public Arbitrator

03/18/05  
Signature Date

3/12/05  
Date of Service (NASD use only)

Respondent, UBS Financial Services, Inc., is liable for:

<u>Member Fees</u>	= \$ 7,000
<u>Total Fees</u>	= \$ 7,000
<u>Less payments</u>	= \$ 7,000
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0

Respondents, UBS Financial Services, Inc. and James M. Olson, are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 5,025
<u>Total Fees</u>	= \$ 5,025
<u>Less payments</u>	= \$ 0
<u>Balance Due NASD Dispute Resolution</u>	= \$ 5,025

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**

Gerald Raskin, Esq. - Public Arbitrator, Presiding Chair  
Robert D. Greenlee - Public Arbitrator  
Jerome C. Zakroff - Non-Public Arbitrator

Concurring Arbitrators:

Gerald Raskin, Esq.  
Public Arbitrator, Presiding Chair

Signature Date

Robert D. Greenlee  
Public Arbitrator

3-16-05  
Signature Date

Jerome C. Zakroff  
Non-Public Arbitrator

Signature Date

3/13/05  
Date of Service (NASD use only)