

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

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In the Matter of the Arbitration Between

Name of Claimant

Huntingdon HomeOwners Corporation

and

Case Number: 04-03154  
Hearing Site: Houston, Texas

Names of Respondents

UBS Financial Services, Inc., and  
UBS Securities, LLC

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**NATURE OF DISPUTE**

Customer v. Member Firms

**REPRESENTATION OF PARTIES**

Huntingdon HomeOwners Corporation ("**Claimant**") was represented by Joseph J. Hroch, Esq., Spencer & Associates, PC, Houston, Texas.

UBS Financial Services, Inc. ("**UBS Financial**") and UBS Securities, LLC ("**UBS Securities**"), hereinafter collectively referred to as "Respondents," were represented by Paul D. Flack, Esq., Nickens, Keeton, Lawless, Flack & Farrell, Houston, Texas.

**CASE INFORMATION**

The Statement of Claim was filed on or about April 29, 2004. The Submission Agreement of Claimant, Huntingdon HomeOwners Corporation, was signed on or about April 22, 2004.

The Joint Statement of Answer was filed by Respondents, UBS Financial Services, Inc. and UBS Securities, LLC, on or about July 14, 2004. The Submission Agreement of Respondent, UBS Financial Services, Inc., was signed on or about May 12, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty, suitability, misrepresentations, and omission of facts. The causes of action related to the offer and sale of investment services and securities. Specifically, Claimant alleged that the following securities were purchase based on the recommendations from UBS: CISCO, WorldCom, and JDS Uniphase. Claimant alleged that it believed that it was buying fixed income

securities when in reality, it was speculating in highly volatile derivative instruments. Claimant also alleged that Respondents never disclosed the risks associated with the derivative products they recommended and the information they received was false and misleading.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim failed to state a claim upon which relief may be granted; Claimant's causes of action are barred by the doctrines of laches, ratification, waiver and estoppel; Claimant cannot demonstrate that Respondents acted with requisite scienter; Claimant expressly and implicitly represented to Respondents their understanding of the nature and risks of the securities purchased in their accounts; Claimant authorized the transactions complained of in the statement of Claim and was in sole control of the assets in the accounts at all relevant times; and Claimant had the opportunity and means to mitigate damages to the accounts

#### **RELIEF REQUESTED**

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$534,012.44
Punitive/Exemplary Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

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**

Respondent, UBS Securities, LLC, did not file with the 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 having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

At the close of the Claimant's case at the final hearing, Respondents made a Motion for a Directed Verdict to Dismiss. The Panel denied this 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. In either case, the parties

have agreed to receive conformed copies of the award while the original(s) 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.) Claimant's claims, each and all, are hereby denied and dismissed with prejudice;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 3.) Any relief not specifically enumerated, including punitive damages and attorney fees, is hereby denied with prejudice.

### **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	= \$ 375.00
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#### **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 persons at the time of the events giving rise to the dispute. In this matter, the member firms are UBS Financial Services, Inc. and UBS Securities, LLC

Member surcharge	= \$ 2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 4,000.00

#### **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:

One (1) Pre-hearing session with Panel x \$1,200.00	= \$ 1,200.00
Pre-hearing conference: September 27, 2004	1 session
Six (6) Hearing sessions x \$1,200.00	= \$ 7,200.00
Hearing Dates: May 23, 2005	2 sessions
May 24, 2005	2 sessions
May 25, 2005	2 sessions
Total Forum Fees	= \$ 8,400.00

The Arbitration Panel has assessed \$4,200.00 of the forum fees to Huntingdon HomeOwners Corporation.

The Arbitration Panel has assessed \$4,200.00 of the forum fees jointly and severally to UBS Financial Services, Inc. and UBS Securities, LLC.

#### Fee Summary

Claimant, Huntingdon HomeOwners Corporation, is liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 4,200.00
Total Fees	= \$ 4,575.00
Less payments	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$ 2,875.00

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

Member Fees	= \$ 7,000.00
Total Fees	= \$ 7,000.00
Less payments	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent, UBS Securities, LLC, is liable for:

Member Fees	= \$ 7,000.00
Total Fees	= \$ 7,000.00
Less payments	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents, UBS Financial Services, Inc. and UBS Securities, LLC, are jointly and severally liable for:

Forum Fees	= \$ 4,200.00
Total Fees	= \$ 4,200.00
Less payments	= \$ 0.00

Balance Due NASD Dispute Resolution

= \$ 4,200.00

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

**ARBITRATION PANEL**

Leonard S. Alpert - Public Arbitrator, Presiding Chair  
William F. Erwin, Jr., Esq. - Public Arbitrator  
Robert N. Mackey - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Leonard S. Alpert  
Leonard S. Alpert  
Public Arbitrator, Presiding Chair

May 26, 2005  
Signature Date

/s/ William F. Erwin, Jr., Esq.,  
William F. Erwin, Jr., Esq.  
Public Arbitrator

May 26, 2005  
Signature Date

/s/ Robert N. Mackey  
Robert N. Mackey  
Non-Public Arbitrator

May 26, 2005  
Signature Date

May 26, 2005  
Date of Service (For NASD office use only)

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Leonard S. Alpert  
Leonard S. Alpert  
Public Arbitrator, Presiding Chair

5/26/15  
Signature Date

William F. Erwin, Jr., Esq.  
William F. Erwin, Jr., Esq.  
Public Arbitrator

Signature Date

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5/26/05  
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Signature Date

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Date of Service (For NASD office use only)