

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Rochelle Brown individually and obo her IRA and Sheldon Brown individually and obo his IRA vs. Irvin W. Rosenzweig, PNC Brokerage Corporation, Nationwide Life Insurance Company, UBS Financial Services, Inc.

Case Number: 04-03234

Hearing Site: Philadelphia, PA

Nature of the Dispute: Customers vs. Member, Non-Member and Associated Person.

REPRESENTATION OF PARTIES

Claimants, Rochelle and Sheldon Brown, hereinafter collectively referred to as "Claimants", were represented by Phillis Horn Epstein, Esq., Epstein, Shapiro & Epstein, P.C., Philadelphia, Pennsylvania.

Respondent, Irvin W. Rosenzweig ("Rosenzweig"), was represented by Paul J. Greco, Esq., Conrad, O'Brien, Gellman & Rohn, P.C., Philadelphia, Pennsylvania.

Respondent, PNC Brokerage Corporation ("PNC"), was represented by Brian A. Carlis, Esq. Stark and Stark, P.C., Princeton, New Jersey.

Respondent, Nationwide Life Insurance Company ("Nationwide"), was represented by Quintin F. Lindsmith, Esq., Bricker & Eckler, L.L.P., Columbus, Ohio.

Respondent, UBS Financial Services, Inc. ("UBS"), was represented by Jon D. Kaplon, Esq., UBS Financial Services, Inc., Weehawken, New Jersey.

CASE INFORMATION

Statement of Claim filed on or about May 3, 2004.

Claimants signed the Uniform Submission Agreement on April 24, 2004.

Statement of Answer filed by Respondent Rosenzweig on July 30, 2004.

Respondent Rosenzweig signed the Uniform Submission Agreement on July 29, 2004.

Statement of Answer filed by Respondent PNC on August 31, 2004.

A representative of Respondent PNC executed the Uniform Submission Agreement on August 31, 2004.

Statement of Answer filed by Respondent Nationwide on September 1, 2004.

A representative of Respondent Nationwide executed the Uniform Submission Agreement on July 28, 2004.

Statement of Answer filed by Respondent UBS on August 25, 2004.
Respondent UBS did not file a Uniform Submission Agreement with NASD Dispute Resolution.

CASE SUMMARY

Claimants asserted the following causes of action, among others: suitability, failure to disclose, failure to supervise, churning, and breach of fiduciary duty. The causes of action relate to the purchase of a variable life insurance policy and variable annuities

Unless specifically admitted in his Answer, Respondent Rosenzweig denied the allegations made in the Statement of Claim and asserted various affirmative defenses, among others: the Statement of Claim fails to state a cause of action upon which relief can be granted; the claims are barred by the equitable defenses of estoppel, waiver, ratification and laches; assumption of risk; and failure to mitigate damages.

Unless specifically admitted in its Answer, Respondent PNC denied the allegations made in the Statement of Claim and asserted various affirmative defenses, among others: the Statement of Claim fails to state a cause of action upon which relief can be granted; Claimants approved and authorized the transactions at issue; ratification; failure to mitigate damages; statutes of limitations; Claimants' claims are barred by the doctrines of laches, *in pari delicto*, and unclean hands; and the claims are barred by the doctrines of waiver, estoppel and ratification.

Unless specifically admitted in its Answer, Respondent Nationwide denied the allegations made in the Statement of Claim and asserted various affirmative defenses, among others; the Statement of Claim fails to state a cause of action upon which relief can be granted; the claims are barred by the doctrines of assumption of risk, contributory negligence, ratification, estoppel, waiver, and laches; and failure to mitigate damages.

Unless specifically admitted in its Answer, Respondent UBS denied the allegations made in the Statement of Claim and asserted various affirmative defenses, among others: the Statement of Claim fails to state a cause of action upon which relief can be granted; the claims are barred by the doctrines of waiver, estoppel and ratification; Claimants cannot demonstrate that UBS acted with the requisite *scienter*; failure to mitigate damages; and Claimants have failed to plead fraud with particularity.

RELIEF REQUESTED

Claimants in their Statement of Claim requested:

Compensatory Damages	\$185,000.00
Punitive Damages	\$185,000.00
Attorneys' Fees	amount unspecified
Other Costs	\$ 1,425.00

Respondent Rosenzweig, in his Statement of Answer, requested he be awarded his attorneys' fees and costs and that the Arbitration Panel (the "Panel") recommend the expungement of all references to this arbitration from his file maintained by the NASD Central Registration Depository ("CRD").

Respondent PNC, in its Statement of Answer, requested that the Statement of Claim be dismissed in its entirety and that it be awarded reasonable costs and expenses, including reasonable attorneys' fees.

Respondent Nationwide, in its Statement of Answer, requested that the Statement of Claim be dismissed and that it be awarded costs, including reasonable attorneys' fees.

Respondent UBS, in its Statement of Answer, requested that the Statement of Claim be dismissed and that it be awarded reasonable costs and disbursements of this proceeding.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent UBS did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

On May 3, 2006, Claimants notified NASD Dispute Resolution that they had settled their disputes with Respondents Rosenzweig, Nationwide and UBS.

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.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent PNC is liable to and shall pay to Claimants the sum of \$4,120.16;
2. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below
3. Respondent PNC is liable to and shall pay to Claimant the amount of \$300.00 as reimbursement for the claim filing fee; and
4. Any and all relief not specifically addressed herein, including punitive damages, is denied.

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
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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 firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondents PNC and UBS are parties.

PNC 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

UBS 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

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

October 18-21, 2005 adjournment requested by all parties	= \$ 1,125.00
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Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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:

One (1) Pre-hearing session with Panel @ \$1,125.00	= \$ 1,125.00
Pre-hearing conference: November 29, 2004 1 session	
Four (4) Hearing sessions @ \$1,125.00	= \$ 4,500.00
Hearing Dates: May 16, 2006 2 sessions	
May 17, 2006 2 sessions	
<u>Total Forum Fees</u>	<u>= \$ 5,625.00</u>

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Adjournment Fee</u>	= \$ 375.00
Total Fees	= \$ 675.00
<u>Less payments</u>	= \$ 1,425.00
Refund Due to Claimants	= \$ 750.00

3. Respondent, Rosenzweig is solely liable for:

<u>Adjournment Fee</u>	= \$ 187.50
Total Fees	= \$ 187.50
<u>Less payments</u>	= \$ 00.00
Balance Due NASD Dispute Resolution	= \$ 187.50

4. Respondent, PNC is solely liable for:

Member Fees	= \$ 5,200.00
Adjournment Fee	= \$ 187.50
<u>Forum Fees</u>	= \$ 5,625.00
Total Fees	= \$ 11,012.50
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 5,812.50

5. Respondent UBS is solely liable for:

Member Fees	= \$ 5,200.00
<u>Adjournment Fee</u>	= \$ 187.50
Total Fees	= \$ 5,387.50
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 187.50

6. Respondent Nationwide is solely liable for:

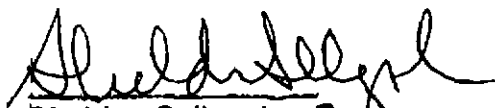
<u>Adjournment Fee</u>	= \$ 187.50
Total Fees	= \$ 187.80
<u>Less payments</u>	= \$ 00.00
Balance Due NASD Dispute Resolution	= \$ 187.50

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

ARBITRATION PANEL

Sheldon Seligsohn, Esq.,	-	Public Arbitrator, Presiding Chairperson
Edward F. Koren, Esq.	-	Public/Non-Public Arbitrator
David S. Butterworth	-	Non-Public Arbitrator

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Sheldon Seligsohn, Esq.
Public Arbitrator, Presiding Chairperson

5/31/06
Signature Date

Edward F. Koren, Esq.
Public Arbitrator

Signature Date

David S. Butterworth
Non-Public Arbitrator

Signature Date

5/31/06

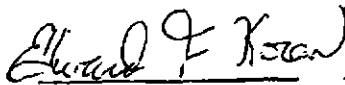
Date of Service (For NASD Dispute Resolution use only)

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Concurring Arbitrators' Signatures

Sheldon Seligsohn, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Edward F. Koren, Esq.
Public Arbitrator

05/25/06

Signature Date

David S. Butterworth
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution use only)

Concurring Arbitrators' Signatures

Sheldon Seligsohn, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Edward F. Koren, Esq.
Public Arbitrator

Signature Date

David S. Butterworth
David S. Butterworth
Non-Public Arbitrator

5/24/06
Signature Date

Date of Service (For NASD Dispute Resolution use only)