

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

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In the Matter of the Arbitration Between

Claimant

Rosemary LaBorde

and

Case Number: 04-04212  
Hearing Site: Southfield, Michigan

Respondents

UBS Financial Services Inc. and  
Michael Lewis Block

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**NATURE OF DISPUTE**

Customer v. Member and Associated Person

**REPRESENTATION OF PARTIES**

Rosemary LaBorde ("Claimant") was represented by Martin J. Brosnan, Esq., Edward M. Nahhat, Esq., and Susan M. Chrzanowski, Esq., Caputo Brosnan, P.C., Warren, Michigan.

UBS Financial Services Inc. ("UBS") and Michael Lewis Block ("Block"), hereinafter collectively referred to as "Respondents," were represented by Christian T. Kemnitz, Esq., Katten Muchin Zavis Rosenman LLP, Chicago, Illinois, and Dan A. Rosenbaum, Esq., UBS Financial Services Inc., New York, New York.

**CASE INFORMATION**

The Statement of Claim was filed on or about June 15, 2004. The Submission Agreement of Rosemary LaBorde was signed on or about May 27, 2004.

The Statement of Answer was filed jointly by UBS and Block on or about September 20, 2004. The Submission Agreement of UBS was signed on or about September 3, 2004, by Dan A. Rosenbaum, Corporate Vice President. The Submission Agreement of Block was signed on or about September 2, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: suitability; violation of NASD Rules of Fair Practice; negligence; respondeat superior; breach of fiduciary duty; and violation of § 451.810 of the Michigan Uniform Securities Act. The causes of action related to Claimant's allegations that Respondents lost her life savings through aggressive trading, reckless asset allocation and promotion of the use of debt in defiance of her stated directives. Claimant further asserted that Respondents invested her accounts in 100% unspecified equity investments, despite her retirement planning objectives.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Respondents handled Claimant's accounts properly, in good faith, in a commercially reasonable manner, and in accordance with the highest standards in the securities industry; Claimant authorized and/or directed all transactions and was in sole control of the assets in her accounts at all relevant times; and the Statement of Claim is barred under the principles of ratification, waiver, and estoppel.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$919,000.00, plus interest, costs, attorneys' fees, punitive and exemplary damages, and any other relief the panel deemed appropriate.

Respondents requested that the claims asserted against them be dismissed in their entirety, that they be awarded their costs and attorneys' fees, and such other relief as the panel deemed just and proper.

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

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").

Respondents moved for summary judgment at hearing. The panel denied the motion.

On May 23, 2005, after the conclusion of the hearing, Respondent Block filed a post-hearing submission advising the panel that Claimant had consented to his request that the panel expunge his CRD record and requested that the panel grant expungement. The panel denies the request herein.

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submission, 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 Michael Lewis Block, are jointly and severally liable for and shall pay to Claimant, Rosemary LaBorde, the sum of \$275,000.00 in compensatory damages;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 3.) Any relief not specifically enumerated, including punitive damages and attorneys' 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

#### **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 = \$ 2,250.00

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 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 x \$1,200.00 = \$ 1,200.00

Pre-hearing conference: October 25, 2004 1 session

Eight (8) Hearing sessions x \$1,200.00 = \$ 9,600.00

Hearing Dates:	May 17, 2005	2 sessions
	May 18, 2005	3 sessions
	May 19, 2005	2 sessions
	May 20, 2005	1 session

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Total Forum Fees = \$10,800.00

The Arbitration Panel has assessed \$5,400.00 of the forum fees to Rosemary LaBorde.

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### Fee Summary

Claimant, Rosemary LaBorde, is liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 5,400.00
Total Fees	= \$ 5,775.00
Less payments	= \$ 1,575.00
Balance Due NASD Dispute Resolution	= \$ 4,200.00

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

Forum Fees	= \$ 5,400.00
Member Fees	= \$ 7,000.00
Total Fees	= \$12,400.00
Less payments	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$ 5,400.00

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

### ARBITRATION PANEL

Ralph C. Smith, Esq. – Public Arbitrator, Presiding Chair

Sal Presti, CPA - Public Arbitrator

Suzanne Slick - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Ralph C. Smith, Esq.  
Ralph C. Smith, Esq.  
Public Arbitrator, Presiding Chair

05/24/05  
Signature Date

/s/ Sal Presti, CPA  
Sal Presti, CPA  
Public Arbitrator

05/24/05  
Signature Date

/s/ Suzanne Slick  
Suzanne Slick  
Non-Public Arbitrator

05/25/05  
Signature Date

05/25/05  
Date of Service (For NASD office use only)

NASD Dispute Resolution  
Arbitration No. 04-04212  
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