

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

---

In the Matter of the Arbitration Between

Claimant

Carolyn B. Levin

and

Case Number: 04-04698  
Hearing Site: Southfield, Michigan

Respondents

UBS Financial Services, Inc.  
f/k/a UBS PaineWebber, Inc.,  
and William S. Gray

---

**NATURE OF DISPUTE**

Customer v. Member and Associated Person

**REPRESENTATION OF PARTIES**

Carolyn B. Levin ("Claimant") was represented by Anthony V. Trogan, Esq., and Lysa Postula-Stein, Esq., Anthony V. Trogan PLLC, West Bloomfield, Michigan.

UBS Financial Services, Inc. f/k/a UBS PaineWebber, Inc. ("UBS") was represented by Dan A. Rosenbaum, Esq., UBS Financial Services, Inc., New York, New York.

William S. Gray ("Gray") was represented by Bradley J. Schram, Esq., and Brian Witus, Esq., Hertz, Schram & Saretsky, P.C., Bloomfield Hills, Michigan. Gray was represented by Dan A. Rosenbaum Esq., in his capacity as an employee of UBS.

**CASE INFORMATION**

The Statement of Claim was filed on or about June 30, 2004. The Submission Agreement of Claimant was signed on or about June 20, 2004.

The Statement of Answer was filed jointly by Respondents on or about September 21, 2004. The Submission Agreement of UBS was signed on or about September 20, 2004, by Dan A. Rosenbaum, Corporate Vice President. The Submission Agreement of Gray was signed on or about July 9, 2004.

### **CASE SUMMARY**

Claimant asserted the following legal theories and principles in support of her claims: breach of contract, common law fraud, promissory estoppel, negligence, malpractice, breach of fiduciary duty, and breach of Michigan securities law. The causes of action relate to Claimant's allegations that Respondents made unsuitable and inappropriate investments in her accounts. Claimant asserted that Respondents recommended unspecified speculative and high risk products without explanations and that these investments were not appropriate for her conservative investment objectives and her desire to generate enough income to sustain her lifestyle. Claimant alleged that, had she been aware that the investment strategies recommended by Respondents were not suitable and required active management and trading, she would not have purchased the products in question.

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 account properly, in good faith, in a commercially reasonable manner, and in accordance with the highest standards in the securities industry; the Statement of Claim should be dismissed because Claimant authorized and/or directed all transactions and investments, and was in sole control of the assets in her account at all relevant times; and the Statement of Claim should be dismissed because it is barred under principles of ratification, waiver, and estoppel.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$185,000.00 as out-of-pocket loss, plus interest, costs, attorneys' fees, rescission, exemplary and punitive damages, and additional or alternative damages as allowed by the panel.

Respondents requested that the claims asserted against them be dismissed in their entirety and that they be awarded their costs, attorneys' fees, expungement of Gray's CRD records pursuant to Rule 2130, and such other and further relief as is 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").

### **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 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 expungement, 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 = \$ 300.00

#### **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. f/k/a UBS PaineWebber, Inc.

Member surcharge = \$ 1,700.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$ 2,750.00

#### **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 \$1,125.00	= \$ 1,125.00
Pre-hearing conference: December 17, 2004	1 session
Six (6) Hearing sessions x \$1,125.00	= \$ 6,750.00
Hearing Dates: September 27, 2005	2 sessions
September 28, 2005	2 sessions
September 29, 2005	2 sessions
Total Forum Fees	= \$ 7,875.00

The Arbitration Panel has assessed \$3,937.50 of the forum fees to Carolyn B. Levin.

The Arbitration Panel has assessed \$3,937.50 of the forum fees jointly and severally to UBS Financial Services, Inc. f/k/a UBS PaineWebber, Inc., and William S. Gray.

#### Fee Summary

Claimant, Carolyn B. Levin, is liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 3,937.50
Total Fees	= \$ 4,237.50
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 2,812.50

Respondent, UBS Financial Services, Inc. f/k/a UBS PaineWebber, Inc., is liable for:

Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents, UBS Financial Services, Inc. f/k/a UBS PaineWebber, Inc., and William S. Gray, are jointly and severally liable for:

Forum Fees	= \$ 3,937.50
Total Fees	= \$ 3,937.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 3,937.50

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

**ARBITRATION PANEL**

Elizabeth K. Bransdorfer, Esq. - Public Arbitrator, Presiding Chair  
Deirdre Renee Fuller-Gamlin, Esq. - Public Arbitrator  
Ann D. Kuhna - Non-Public Arbitrator

**Concurring Arbitrators:**

/s/ Elizabeth K. Bransdorfer, Esq.  
Elizabeth K. Bransdorfer, Esq.  
Public Arbitrator, Presiding Chair

09/29/05  
Signature Date

/s/ Deirdre Renee Fuller-Gamlin, Esq.  
Deirdre Renee Fuller-Gamlin, Esq.  
Public Arbitrator

09/29/05  
Signature Date

/s/ Ann D. Kuhna  
Ann D. Kuhna  
Non-Public Arbitrator

09/29/05  
Signature Date

09/30/05  
Date of Service (For NASD office use only)

