

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant  
Sharon Wright

Case Number: 04-04829

Names of the Respondents  
UBS Financial Services, Inc.  
J.C. Bradford & Co.  
n/k/a UBS Financial Services, Inc.  
Sterling M. Zerbe

Hearing Site: Pittsburgh, Pennsylvania

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Nature of the Dispute: Customer vs. Members and Associated Person.

**REPRESENTATION OF PARTIES**

Claimant, Sharon Wright, hereinafter referred to as "Claimant", was represented by Scott A. Lane, Esq., Edgar Snyder & Associates, LLC, Pittsburgh, Pennsylvania.

Respondents, UBS Financial Services, Inc. ("UBS"), J.C. Bradford & Co. n/k/a UBS Financial Services, Inc. ("J.C. Bradford") and Sterling M. Zerbe ("Zerbe"), hereinafter collectively referred to as "Respondents", were represented by Tracey Salmon-Smith, Esq., UBS Financial Services, Inc., New York, New York.

**CASE INFORMATION**

Statement of Claim filed on July 8, 2004.

Claimant signed the Uniform Submission Agreement on April 9, 2004.

Statement of Answer filed by Respondents on September 30, 2004.

A representative of Respondent UBS executed the Uniform Submission Agreement on July 22, 2004.

Respondent Zerbe signed the Uniform Submission Agreement on September 29, 2004.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action, among others: failure to supervise, negligence, fraud, unsuitability, overconcentration, breach of contract, violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law 73 Pa. C.S., 201 et seq., violation of the Pennsylvania Securities Act, and breach of fiduciary duty. The causes of action relate to the purchase and sale of Putnam New Opportunities Fund, Alliance Growth Fund, John Hancock Special Equities Fund, MFS Emerging Growth Fund, and MFS Value Fund.

Unless specifically admitted in their Statement of Answer, Respondents denied the allegations

made in the Statement of Claim and asserted the following defenses, among others: failure to state a claim upon which relief may be granted; Claimant's claims are barred by the doctrines of ratification, waiver and estoppel; failure to mitigate damages; failure to adequately allege fraud; Claimant expressly and implicitly represented to Respondents that she understood the nature and risks of the securities she purchased; Claimant cannot demonstrate that Respondents acted with the requisite *scienter*; and Claimant's alleged losses were not proximately caused by any alleged misconduct of Respondents.

### **RELIEF REQUESTED**

Claimant in the Statement of Claim requested:

Compensatory Damages	\$ 200,000.00
Punitive Damages	amount unspecified
Attorneys' Fees	amount unspecified
Interest	amount unspecified
Other Costs	amount unspecified

Respondents in their Statement of Answer requested that the Statement of Claim be dismissed and that the Arbitration Panel (the "Panel") order the expungement of all reference to this matter from Respondent Zerbe's Central Registration Depository ("CRD") record.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On August 19, 2005, Claimant dismissed Respondent Zerbe from this matter with prejudice.

At the hearing on the merits, Respondent UBS made an oral Motion for Summary Judgment at the close of Claimant's presentation of evidence. The Panel denied the motion.

The parties 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 UBS is liable to and shall pay to Claimant the sum of \$22,702.00 in compensatory damages, plus simple interest at a rate of 3% per annum accruing from November 17, 2005 until the award is paid in full;
2. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and
3. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

### **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. Accordingly, Respondent UBS is a party.

Member surcharge = \$ 1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 2,750.00

#### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. 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: January 6, 2005 1 session

Four (4) Hearing sessions @ \$ 1,125.00 = \$ 4,500.00

Hearing Dates: November 16, 2005 2 sessions

November 17, 2005 2 sessions

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Total Forum Fees = \$ 5,625.00

The Panel has assessed \$ 5,625.00 of the forum fees to Respondent UBS.

### **Fee Summary**

1. Claimant is assessed and shall pay:

Initial Filing Fee = \$ 300.00

Total Fees = \$ 300.00

Less payments = \$ 1,425.00

Refund owed to Claimant = \$ 1,125.00

2. Respondent UBS is assessed and shall pay:

Member Fees = \$ 5,200.00

Forum Fees = \$ 5,625.00

Total Fees = \$ 10,825.00

Less payments	= \$ 3,400.00
Balance Due NASD Dispute Resolution	= \$ 7,425.00

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

**ARBITRATION PANEL**

Marshall S. Galinsky, Esq.	- Public Arbitrator, Presiding Chairperson
Frank C. Fogl, Jr., Esq.	- Public Arbitrator, Panelist
Michael D. Neft	- Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures

Marshall S. Galinsky

Marshall S. Galinsky, Esq.  
Public Arbitrator, Presiding Chairperson

11/18/05  
Signature Date

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Frank C. Fogl, Jr., Esq.  
Public Arbitrator, Panelist

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

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Michael D. Neft  
Non-Public Arbitrator, Panelist

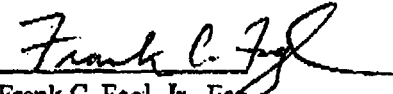
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Signature Date

November 21, 2005  
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Marshall S. Galinsky, Esq.  
Public Arbitrator, Presiding Chairperson

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

  
\_\_\_\_\_  
Frank C. Fogl, Jr., Esq.  
Public Arbitrator, Panelist

November 18, 2005  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Michael D. Neft  
Non-Public Arbitrator, Panelist

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

November 21, 2005  
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Marshall S. Galinsky, Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date

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Frank C. Fogl, Jr., Esq.  
Public Arbitrator, Panelist

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

  
Michael D. Neff  
Non-Public Arbitrator, Panelist

11/18/2005  
Signature Date

November 21, 2005  
Date of Service (For NASD Dispute Resolution office use only)