

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimants

Frank M. Sims, Jr., as Trustee of the Sims
Charitable Remainder Trust, Frank McNair
Sims IRA, Donald Wild IRA, Harriet Wild IRA,
and Bruce T. Stubbs, M.D. 401K

and

Case Number: 04-05109
Hearing Site: Detroit, Michigan

Respondents

McDonald Investments, Inc., and
UBS Financial Services, Inc.

NATURE OF DISPUTE

Customers v. Members

REPRESENTATION OF PARTIES

Frank M. Sims, Jr., as Trustee of the Sims Charitable Remainder Trust, Frank McNair Sims IRA, Donald Wild IRA, Harriet Wild IRA, Bruce T. Stubbs, M.D. 401K ("Claimants") were represented by Joseph H. Spiegel, Esq., Ann Arbor, Michigan.

McDonald Investments, Inc. ("McDonald") was represented by Steve R. Malynn, Esq., Giffen & Kaminski, Cleveland, Ohio.

UBS Financial Services, Inc. ("UBS") was represented by Vincent J. Oliva, Esq., UBS Financial Services, Inc., Weehawken, New Jersey.

CASE INFORMATION

The Statement of Claim was filed on or about April 16, 2004. The Submission Agreement of Frank M. Sims, Jr., as Trustee of the Sims Charitable Remainder Trust, was signed on or about June 28, 2004. The Submission Agreement of Frank McNair Sims IRA, was signed on or about June 29, 2004 by Frank McNair Sims, individually and for his self-Directed IRA. The Submission Agreement of Donald Wild IRA, was signed on or about June 28, 2004, by Donald Wild, individually and for her Self-Directed IRA. The Submission Agreement of Harriet Wild IRA, was signed on or about June 28, 2004, by Harriet L. Wild, individually and for her Self-Directed IRA. The Submission Agreement of Bruce T. Stubbs, M.D. 401K was signed on or about June 29, 2004, by Bruce T. Stubbs, individually and for his Self-Directed 401K, PSP.

The Statement of Answer and Motion to Dismiss was filed by McDonald on or about September 29, 2004. The Submission Agreement of McDonald Investments, Inc., was signed on or about September 1, 2004.

The Statement of Answer and Motion to Dismiss was filed by UBS on or about January 4, 2005. The Submission Agreement of UBS Financial Services, Inc. was signed on or about January 4, 2005, by Vincent J. Oliva, Corporate Vice President.

Claimants filed a Joint Response to the Motions to Dismiss submitted by McDonald and UBS on or about February 10, 2005. McDonald filed a Reply to Claimants' Joint Response to the Motions to Dismiss on or about March 9, 2005. Claimants filed a Supplemental Response to Respondents' Motions to Dismiss on or about March 23, 2005. McDonald filed a Reply to Claimants' Supplemental Response on or about March 31, 2005. UBS filed an Opposition to Claimants' Supplemental Response on or about April 5, 2005.

CASE SUMMARY

Claimants asserted the following causes of action: liability under 1934 Act anti-fraud provisions; violations of §§ 12 and 17 of the Securities Act of 1922, as Amended; liability under the 1933 Act anti-fraud provisions; liability under the Michigan blue sky law; common law fraudulent misrepresentation, negligent misrepresentation, silent fraud and fraudulent concealment; breach of common law fiduciary duty; and ERISA violations. The causes of action related to Claimant's allegations that a J.C. Bradford representative made erroneous representations regarding the investment in Market-Linked S&P REIT Composite Index, 100-Plus issued by Bankers Trust ("Market-Linked Deposits.") Claimants asserted that they would never have invested in the Market-Linked Deposits had they known that they would only get their money back after five years, and not, at the very least, the guaranteed five percent as was allegedly promised.

Unless specifically admitted in its Answer, McDonald denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimants fail to state a claim upon which relief may be granted; Claimants suffered damages by reason of the acts complained of in the Statement of Claim; and Claimants' claims are barred by the doctrines of estoppel, ratification and waiver.

Unless specifically admitted in its Answer, UBS denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim fails to state a claim upon which relief can be granted; the Statement of Claim is barred by the doctrine of laches; and Claimants' causes of action are barred by the doctrines of ratification, waiver, and estoppel.

RELIEF REQUESTED

Claimants requested an award in the amount of \$87,500.00, plus rescission, interest, exemplary damages, costs, expenses and such other just and equitable relief the panel deemed appropriate.

McDonald requested that the claims asserted against it be dismissed in their entirety and that it be awarded its costs, attorneys' fees, and expungement.

UBS requested that the claims asserted against it be dismissed in their entirety and that it be awarded its costs, attorneys' fees, and any other relief the panel deemed appropriate.

OTHER ISSUES CONSIDERED & DECIDED

McDonald filed a Motion to Dismiss based on Claimants having alleged misrepresentations that Claimants admit McDonald had no part of, that the investments at issue are not eligible for submission to NASD by operation of the six-year rule or are barred by the applicable statutes of limitation, and that the Statement of Claim fails to state any viable cause for relief.

UBS filed a Motion to Dismiss based on failure to state a claim and the claims are time barred by the applicable Statute of Limitations and that the investments are beyond the six-year eligibility rule.

The panel heard oral arguments on the Motions to Dismiss on March 15, 2005. In its order entered on March 16, 2005, the panel ruled that arguments were continued until April 6, 2005, and that the Claimants were to file a Supplemental Brief within seven days and Respondents file a Supplemental Brief within seven days thereafter.

After consideration of the parties written and oral presentations, the panel finds that Claimants' action was not timely brought. The panel therefore grants the Motions to Dismiss filed by McDonald Investments, Inc., and UBS Financial Services, Inc.

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.) Claimants' claims, each and all, are denied and dismissed without 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, expungement, and attorneys' fees, is hereby denied without 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 = \$ 225.00

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 persons at the time of the events giving rise to the dispute. In this matter, the member firms are McDonald Investments, Inc., and UBS Financial Services, Inc.

Member surcharge	= \$ 1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 1,700.00

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:

Three (3) Pre-hearing sessions with Panel x \$750.00	= \$ 2,250.00
Pre-hearing conferences: February 4, 2005 1 session	
March 16, 2005 1 session	
April 6, 2005 1 session	
<hr/> Total Forum Fees	<hr/> = \$ 2,250.00

The Arbitration Panel has assessed \$1,125.00 of the forum fees jointly and severally to Frank M. Sims, Jr., as Trustee of the Sims Charitable Remainder Trust, Frank McNair Sims IRA, Donald Wild IRA, Harriet Wild IRA, Bruce T. Stubbs, M.D. 401K.

The Arbitration Panel has assessed \$1,125.00 of the forum fees jointly and severally to McDonald Investments, Inc., and UBS Financial Services, Inc.

Fee Summary

Claimants, Frank M. Sims, Jr., as Trustee of the Sims Charitable Remainder Trust, Frank McNair Sims IRA, Donald Wild IRA, Harriet Wild IRA, Bruce T. Stubbs, M.D. 401K, are jointly and severally liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 1,125.00
Total Fees	= \$ 1,350.00
Less payments	= \$ 1,000.00
Balance Due NASD Dispute Resolution	= \$ 350.00

Respondent, McDonald Investments, Inc., is liable for:

Member Fees	= \$ 3,550.00
Total Fees	= \$ 3,550.00
Less payments	= \$ 2,450.00
Balance Due NASD Dispute Resolution	= \$ 1,100.00

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

Member Fees	= \$ 3,550.00
Total Fees	= \$ 3,550.00
Less payments	= \$ 3,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents, McDonald Investments, Inc., and UBS Financial Services, Inc., are jointly and severally liable for:

Forum Fees	= \$ 1,125.00
Total Fees	= \$ 1,125.00
Less payments	= \$ 600.00
Balance Due NASD Dispute Resolution	= \$ 525.00

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

ARBITRATION PANEL

Roland L. Olzark, J.D. - Public Arbitrator, Presiding Chair
David E. Nims, Esq. - Public Arbitrator
Patrick A. Guentner - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Roland L. Olzark, J.D.
Roland L. Olzark, J.D.
Public Arbitrator, Presiding Chair

04/07/05
Signature Date

/s/ David E. Nims, Esq.
David E. Nims, Esq.
Public Arbitrator

04/07/05
Signature Date

/s/ Patrick A. Guentner
Patrick A. Guentner
Non-Public Arbitrator

04/07/05
Signature Date

04/07/05
Date of Service (For NASD office use only)

04/07/2005 13:30 FAX

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ARBITRATION PANEL

Roland L. Olzark, J.D. - Public Arbitrator, Presiding Chair
David E. Nims, Esq. - Public Arbitrator
Patrick A. Guentner - Non-Public Arbitrator

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Public Arbitrator, Presiding Chair

Signature Date



David E. Nims, Esq.
Public Arbitrator

4/7/05

Signature Date

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Non-Public Arbitrator

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