

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimants

Darrel and Elaine Mielke

v.

04-05194

Minneapolis, Minnesota

Respondent

UBS Paine Webber, Inc.

Nature of Dispute: Customers v. Member

REPRESENTATION OF PARTIES

Darrel and Elaine Mielke ("**Claimants**") were represented by Harney H. Eckart, Esq., and Amy M. Leonetti, Esq., of Eckart & Leonetti, P.A, St. Paul, Minnesota.

UBS Paine Webber, Inc. ("**Respondent**") was represented by Terrance J. Fleming, Esq., and Sandra S. Smalley, Esq., of Lindquist & Vennum, P.L.L.P., Minneapolis, Minnesota.

CASE INFORMATION

The Statement of Claim was filed on or about July 14, 2004. The Submission Agreements of Claimants were signed on or about June 11, 2004.

The Statement of Answer was filed by Respondent, UBS Paine Webber, Inc., on or about October 5, 2004. The Submission Agreement of Respondent, UBS Paine Webber, Inc., was signed on or about October 5, 2004.

CASE SUMMARY

Claimants asserted causes of action including the following: respondeat superior; breach of fiduciary duty; breach of contract; and negligence. The causes of action related to Claimants' allegation that they relied on the recommendation from a UBS employee to retire and take a lump sum payment (in lieu of a pension) and invest in an annuity with a guaranteed income rider. Claimants alleged that this advice was inappropriate, did not provide for their specific retirement needs and was not inheritable as specified. Claimants stated that, as a result, they had to take out a home equity loan to meet their current and future income needs.

Respondent denied the allegations set forth in the Statement of Claim and asserted defenses including the following: the Statement of Claim failed to state a claim upon which relief can be

granted; Claimants' causes of action are barred by the doctrines of ratification, waiver, and estoppel; Claimants expressly and implicitly represented to Respondent that they understood the nature and risks of the securities they purchased; Respondent was not the proximate cause of any injury to Claimants, or any damages incurred by Claimants; all transactions complained of in the Statement of Claim were duly authorized by Claimants who, at all times, were in sole control of their accounts; and Respondent and its officers, agents and employees, in discharging their duties, acted in good faith and exercised the degree of care, diligence, and skill in which a prudent person would exercise in similar circumstances and like positions.

RELIEF REQUESTED

Claimants requested an award of \$264,000 in compensatory damages, plus lost opportunity damages of \$228,000, attorneys' fees, punitive damages costs, interest, and any other relief the panel deemed just and equitable.

Respondent requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

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 originals 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 hereby denied and dismissed with prejudice;
2. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, are denied with prejudice; and
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys' fees.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee = \$ 300

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 Paine Webber, Inc.

Member surcharge = \$ 1,700

Pre-hearing process fee = \$ 750

Hearing process fee = \$ 2,750

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 arbitrators, 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 the Chairperson x \$ 450 = \$ 450

Pre-hearing conference: 04/20/2005 1 session

Six (6) Hearing sessions with Panel x \$ 1,125 = \$ 6,750

Hearing Dates: 06/13/2005 2 sessions

06/14/2005 2 sessions

06/15/2005 2 sessions

Total Forum Fees = \$ 7,200

The Arbitration Panel has assessed \$ 7,200 of the forum fees to UBS Paine Webber, Inc.

FEE SUMMARY

Claimants, Darrel and Elaine Mielke, are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 300
<u>Total Fees</u>	= \$ 300
<u>Less payments</u>	= \$ 2,125
<u>Balance Refunded By NASD Dispute Resolution</u>	= \$ 1,825

Respondent, UBS Paine Webber, Inc., is liable for:

<u>Member Fees</u>	= \$ 5,200
<u>Forum Fees</u>	= \$ 7,200
<u>Total Fees</u>	= \$ 12,400
<u>Less payments</u>	= \$ 2,450
<u>Balance Due NASD Dispute Resolution</u>	= \$ 9,950

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

ARBITRATION PANEL

D. Randall Blohm, Esq. - Public Arbitrator, Presiding Chair
Jack D. Elmquist, Esq. - Public Arbitrator
Michael L. Weiner, JD - Non-Public Arbitrator

Concurring Arbitrators:

D. Randall Blohm, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Jack D. Elmquist, Esq.
Public Arbitrator

Signature Date

Michael L. Weiner, JD
Non-Public Arbitrator

Signature Date

6/22/05
Date of Service (NASD use only)

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