

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

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In the Matter of the Arbitration Between

Name of Claimant

Stephanie Cary

and

Case Number: 04-05549  
Hearing Site: Houston, Texas

Names of Respondents

UBS Financial Services, Inc.,  
Joseph Jordan Cunneff,  
John Arthur Hicks, and  
Lydia Monroe Sullivan

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**NATURE OF DISPUTE**

Customer v. Member Firm and Associated Persons

**REPRESENTATION OF PARTIES**

Stephanie Cary ("**Claimant**") was represented by Ross Spence, Esq., Crady, Jewett & McCulley, LLP, Houston, Texas.

UBS Financial Services, Inc. ("**UBS**"), Joseph Jordan Cunneff ("**Cunneff**"), John Arthur Hicks ("**Hicks**"), and Lydia Monroe Sullivan ("**Sullivan**"), hereinafter collectively referred to as "Respondents," were represented by Jack D. Ballard, Esq., The Ballard Law Firm, Houston, Texas.

**CASE INFORMATION**

The Statement of Claim was filed on or about August 6, 2004. The Submission Agreement of Claimant, Stephanie Cary, was signed on or about June 29, 2004.

The Joint Statement of Answer was filed by Respondents, UBS Financial Services, Inc., Joseph Jordan Cunneff, John Arthur Hicks, and Lydia Monroe Sullivan, on or about October 20, 2004. The Submission Agreement of Respondent, UBS Financial Services, Inc., was signed on or about October 21, 2004. The Submission Agreement of Respondent, Joseph Jordan Cunneff, was signed on or about October 9, 2004. The Submission Agreement of Respondent, John Arthur Hicks, was signed on or about October 5, 2005.

The Submission Agreement of Respondent, Lydia Monroe Sullivan, was signed on or about September 29, 2004.

### **CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty, negligence and failure to supervise. The causes of action related to the recommendation and purchase of various unspecified equities, specifically B-share mutual funds. Claimant alleged that Respondents failed to disclose material information regarding the differences in A-share, B-share, and C-share mutual funds, principally about the commissions that would be charged and the unsuitability of these funds for the Claimant's investment objectives. Claimant also alleged that Respondents failed to properly interview her to determine her financial needs, and for their failure to properly profile her to determine her tolerance for risk and the failure to recommend suitable investments. Also, Claimant alleged that Respondents failed to properly allocate her retirement investment portfolio between difference classes of investment assets to reduce risk. Finally, Claimant alleged that Respondents intentionally profited at the expense of Claimant and harmed this widow's fixed income future.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Respondents were not the cause of any damages to Claimant, that they were the result of market forces and Claimant's own actions; Respondents did not violate the federal and state securities statutes and that all of Respondents' recommendations were undertaken in good faith and were consistent with Claimant's expressed investment objectives; and Respondents were not the cause of lost assets, lost opportunities, consequential losses and/or further injury to Claimant, as alleged in the Statement of Claim.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$669,099.00
Punitive/Exemplary Damages	Unspecified
Attorneys' Fees	Unspecified
Interest	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

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

Unless NASD specifically waives this requirement in writing, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130, the arbitration panel has made the following findings of fact:

The registered person, Lydia Monroe Sullivan, was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

At the final hearing, Claimant's counsel submitted a written amendment to the Statement of Claim, as contained in his exhibits. Respondents' counsel did not object to this amendment. The Panel granted this amendment to the pleading.

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.) Respondents, UBS Financial Services, Inc., Joseph Jordan Cunneff, and John Arthur Hicks, are jointly and severally liable for and shall pay to Claimant, Stephanie Cary, the sum of \$135,000.00 in compensatory damages;
- 2.) Respondents, UBS Financial Services, Inc., Joseph Jordan Cunneff, and John Arthur Hicks, are jointly and severally liable for and shall pay to Claimant, Stephanie Cary, interest at the rate of 5% per annum, pursuant to Texas statute, from and including October 31, 2003 through and including the date the Award is paid in full;
- 3.) Respondents, UBS Financial Services, Inc., Joseph Jordan Cunneff, and John Arthur Hicks, are jointly and severally liable for and shall pay to Claimant, Stephanie Cary, the sum of \$50,000.00 in attorneys' fees pursuant to Texas law;
- 4.) Respondents, UBS Financial Services, Inc., Joseph Jordan Cunneff, and

John Arthur Hicks, are jointly and severally liable for and shall pay to Claimant, Stephanie Cary, the sum of \$26,778.00 in costs;

- 5.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 6.) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent, Lydia Monroe Sullivan's, registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent, Lydia Monroe Sullivan, must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive; and
- 7.) Any relief not specifically enumerated, including punitive damages and attorney fees, is hereby denied with prejudice.

### **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	= \$	375.00
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#### **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 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 arbitrators, including a pre-hearing conference with the arbitrators, 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: January 14, 2005 1 session		

Eight (8) Hearing sessions x \$1,200.00		= \$ 9,600.00
Hearing Dates:	July 5, 2005	2 sessions
	July 6, 2005	2 sessions
	July 7, 2005	2 sessions
	July 8, 2005	2 sessions
<hr/> Total Forum Fees		= \$ 10,800.00

The Arbitration Panel has assessed \$10,800.00 of the forum fees to UBS Financial Services, Inc.

**Fee Summary**

Claimant, Stephanie Cary, is liable for:

<u>Initial Filing Fee</u>	= \$ 375.00
<u>Total Fees</u>	= \$ 375.00
<u>Less payments</u>	= \$ 1,575.00
<u>Refund Due to Claimant</u>	= \$ 1,200.00

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

<u>Member Fees</u>	= \$ 7,000.00
<u>Forum Fees</u>	= \$ 10,800.00
<u>Total Fees</u>	= \$ 17,800.00
<u>Less payments</u>	= \$ 7,000.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 10,800.00

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

**ARBITRATION PANEL**

Jeff Kilgore, Esq. – Public Arbitrator, Presiding Chair  
Robert Dan Sherrill - Public Arbitrator  
Larry J. Sklar - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Jeff Kilgore, Esq.  
Jeff Kilgore, Esq.  
Public Arbitrator, Presiding Chair

July 14, 2005  
Signature Date

/s/ Robert Dan Sherrill  
Robert Dan Sherrill  
Public Arbitrator

July 15, 2005  
Signature Date

/s/ Larry J. Sklar  
Larry J. Sklar  
Non-Public Arbitrator

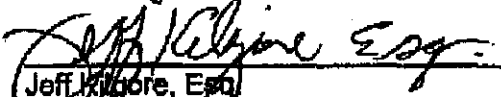
July 13, 2005  
Signature Date

July 14, 2005  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

Jeff Kligore, Esq. – Public Arbitrator, Presiding Chair  
Robert Dan Sherrill - Public Arbitrator  
Larry J. Sklar - Non-Public Arbitrator

Concurring Arbitrators:

  
Jeff Kligore, Esq.  
Public Arbitrator, Presiding Chair

  
Signature Date

Robert Dan Sherrill  
Public Arbitrator

Signature Date

Larry J. Sklar  
Non-Public Arbitrator

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Robert Dan Sherrill  
Public Arbitrator

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Larry J. Sklar  
Non-Public Arbitrator

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Signature Date

7/15/2005  
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Signature Date

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Signature Date



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