

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

BJJ Company, LLC (formerly BJJ Company, Inc.), Frances E. Blincoe and Helen Blincoe, co-trustees of the F. E. Blincoe Trust UAD 3/23/89, and F. Earl Blincoe and Helen Blincoe Family Limited Partnership, a California Limited Partnership, Claimants v. PaineWebber Inc. (now known as UBS Financial Services Inc.), Lucille Prochoren, Sue Gaines, Cheryl Nettleton, and John S. Blincoe, Respondents

Case Number: 04-05938

Hearing Site: San Francisco, California

Nature of the Dispute: Customers vs. Member and Associated Persons

REPRESENTATION OF PARTIES

For Claimants:

John H. McKinley, Esq.
Brown, Hall, Shore & McKinley
Stockton, California

For Respondents:

Peter R. Boutin, Esq.
Benjamin W. White, Esq.
Keesal, Young & Logan
San Francisco, California

CASE INFORMATION

Statement of Claim filed: August 17, 2004

Claimants' Joint Uniform Submission Agreement signed: July 15, 2004

Joint Statement of Answer filed by Respondents UBS Financial Services, Inc. (f/k/a PaineWebber, Inc.) ("UBS"), Lucille Prochoren, Sue Gaines and Cheryl Nettleton filed: December 16, 2004

Statement of Answer filed by Respondent John S. Blincoe filed: January 6, 2005

CASE SUMMARY

In the Statement of Claim, Claimants alleged breach of contract, negligence, failure to supervise, breach of fiduciary duty, misrepresentations, unauthorized trading, churning, omission of facts, and unsuitability. Claimants' allegations involved various unspecified securities.

In their Answer, Respondents UBS, Lucille Prochoren, Sue Gaines, and Cheryl Nettleton denied all allegations of wrongdoing set forth in Claimants' Statement of Claim and asserted various affirmative defenses.

Respondent John S. Blincoe adopted as his Answer to the Statement of Claim Respondents UBS, Lucille Prochoren, Sue Gaines, and Cheryl Nettleton's Answer to the Statement of Claim.

RELIEF REQUESTED

Claimants requested compensatory damages in an amount in excess of \$3,500,000.00, subject to proof, plus unspecified consequential damages, interest, punitive damages and reimbursement for costs and fees incurred in bringing this arbitration.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety and an award of costs. Respondents also requested an expungement of all references to the above captioned arbitration from the registration records maintained by the NASD Central Registration Depository ("CRD") for Lucille Prochoren, Sue Gaines (also known as Sue Mills Gaines) and Cheryl Nettleton.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents did not file with the NASD Dispute Resolution a properly executed submission agreement but are required to submit to arbitration pursuant to the Code and, having answered the claim, are bound by the determination of the Panel on all issues submitted.

On November 22, 2004 and December 6, 2004, Claimants and Claimants' counsel signed, respectively, a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimants shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

On June 8, 2005, Claimants notified NASD that the parties reached a settlement.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies.

STIPULATED FACTUAL FINDINGS

It is hereby stipulated by Claimants and Respondents, through their undersigned attorneys, that:

1. Claimants opened their UBS accounts in May and June of 2000. Frances Earl Blincoe ("Earl Blincoe") was the person authorized to make decisions regarding the Claimant-entities' UBS accounts.
2. Lucille Prochoren, Sue Gaines and Cheryl Nettleton never acted as Claimants' broker at UBS.
3. In a letter dated August 21, 2000 from Respondent Cheryl Nettleton to Claimant BJJ Company, Inc. ("BJJ"), Ms. Nettleton advised of the activity and commissions in the BJJ account in June 2000. Ms. Nettleton also confirmed that UBS's records indicated that the return/risk profile for the BJJ account was "Capital Appreciation/Aggressive." Finally, Ms. Nettleton invited Claimant to contact her if any of the BJJ account information was incorrect or to discuss the account. Claimant BJJ received this letter and produced it during the course of discovery in this action. Claimant BJJ did not contact Ms. Nettleton in response to her August 21, 2000 letter. Earl Blincoe contacted investment advisor John Blincoe in response to this letter.
4. In a letter dated March 27, 2001 from Respondent Lucille Prochoren to F. Earl Blincoe and Helen Blincoe, regarding the account of Claimant F. E. Blincoe Trust, Ms. Prochoren advised of the net equity in the Blincoe Trust account and the current debit balance. Ms. Prochoren further advised in the letter that the use of margin (1) "increases the risks involved should the market price decline," (2) can result in a margin call, and (3) results in interest charges on the amount borrowed. Ms. Prochoren further advised in the letter that UBS's records indicated that the investment objectives for the Blincoe Trust account were, in priority order, "Growth, Aggressive, and Moderate." Finally, Ms. Prochoren invited Claimant to contact her if any of the account information was incorrect or to discuss the account. Claimant received this letter and produced it during the course of discovery in this action. Claimant did not contact Ms. Prochoren in response to her March 27, 2001 letter. Earl Blincoe contacted investment advisor John Blincoe in response to this letter.
5. In a letter dated April 30, 2001 from Respondent Sue Gaines to F. Earl Blincoe and Helen Blincoe regarding the account of Claimant F. Earl Blincoe and Helen Blincoe Family Limited Partnership, Ms. Gaines advised that UBS's records indicated that the return objectives for the Blincoe Family LP account were "Mix" and the risk profile was "(1) Aggressive, (2) Moderate." Ms. Gaines requested that Claimant review the Blincoe Family LP account to make sure the

trading activity was consistent with the objectives and otherwise appropriate in light of Claimant's current financial position. Finally, Ms. Gaines invited Claimant to contact her if any of the account information was incorrect or to discuss the account. Claimant received this letter and produced it during the course of discovery in this action. Claimant did not contact Ms. Gaines in response to her April 30, 2001 letter. Earl Blincoe contacted investment advisor John Blincoe in response to this letter.

6. In a letter dated April 30, 2001 from Respondent Sue Gaines to F. Earl Blincoe and Helen Blincoe regarding the account of Claimant F. E. Blincoe Trust, Ms. Gaines advised that UBS's records indicated that the return objective for the account was "Growth" and the risk profile was "(1) Aggressive, (2) Moderate." Ms. Gaines requested that Claimant review the account to make sure the trading activity was consistent with the objectives and otherwise appropriate in light of Claimant's current financial position. Finally, Ms. Gaines invited Claimant to contact her if any of the account information was incorrect or to discuss the account. Claimant did not contact Ms. Gaines in response to her April 30, 2001 letter. Earl Blincoe contacted investment advisor John Blincoe in response to this letter.

7. In a letter dated August 29, 2001 from Respondent Sue Gaines to F. Earl Blincoe and Helen Blincoe regarding the account of Claimant BJJ Company, Inc., Ms. Gaines advised that UBS's records indicated that the return objective for the BJJ account was "Growth" and the risk profile was "(1) Aggressive, (2) Moderate." Ms. Gaines requested that Claimant review the account to make sure the trading activity was consistent with the objectives and otherwise appropriate in light of Claimant's current financial position. Finally, Ms. Gaines invited Claimant to contact her if any of the account information was incorrect or to discuss the account. Claimant did not contact Ms. Gaines in response to her August 29, 2001 letter. Earl Blincoe contacted investment advisor John Blincoe in response to this letter.

8. In a letter dated August 29, 2001 from Respondent Sue Gaines to F. Earl Blincoe and Helen Blincoe regarding the account of Claimant F. Earl Blincoe and Helen Blincoe Family Limited Partnership, Ms. Gaines advised that UBS's records indicated that the return objectives for the account were "Mix" and the risk profile was "(1) Aggressive, (2) Moderate." Ms. Gaines requested that Claimant review the account to make sure the trading activity was consistent with the objectives and otherwise appropriate in light of Claimant's current financial position. Finally, Ms. Gaines invited Claimant to contact her if any of the account information was incorrect or to discuss the account. Claimant did not contact Ms. Gaines in response to her August 29, 2001 letter. Earl Blincoe contacted investment advisor John Blincoe in response to this letter.

9. Earl Blincoe had numerous verbal contacts with John Blincoe concerning Claimants' account, along with correspondence containing instructions.

APPLICABLE LEGAL STANDARDS

The parties have agreed that the applicable legal standards in this matter for purposes of the request for expungement are as follows:

1. With respect to supervision, the applicable legal standard is reasonable supervision. In the Matter of Benz, 64 S.E.C. Docket 396, 1997 WL 137027, *3 (March 26, 1997) [branch manager held to standard of "reasonableness" which is determined by the particular circumstances of each case]. No manager is required to be flawless, nor is it enough to say, in hindsight, that management should have handled things differently or should have made different professional judgments. Carpenter v. Harris, Upham & Co., 594 F.2d 388, 394 (4th Cir. 1979) [duty to supervise is a duty to act in an "adequate and reasonable fashion"; it does not create strict liability for actions of a supervised individual].
2. Pursuant to Rule 2130 of the NASD Code of Arbitration Procedure and NASD Notice to Members 04-16, an Arbitration Panel may grant a request for expungement of a matter from a registered representative's registration records if it is based on an affirmative arbitral finding that the registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

STIPULATED RECOMMENDATION OF EXPUNGEMENT

The Parties entered into a Confidential Settlement Agreement and Release which provided for compensation to Claimants for John Blincoe's actions as financial advisor to Claimants, and it is hereby stipulated by Claimants and Respondents, through their undersigned attorneys that:

1. In consideration of and subject to payment of the agreed confidential settlement, all of Claimants' claims asserted against Respondents are hereby dismissed with prejudice;
2. Claimants and Respondents jointly request that the Panel rendering the following award:

The Panel recommends the expungement of all references to the above captioned arbitration from Respondents Lucille Prochoren, Sue Gaines (also known as Sue Mills Gaines) and Cheryl Nettleton's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notice to Members 04-16, Respondents Lucille Prochoren, Sue Gaines (also known as Sue Mills Gaines) and Cheryl Nettleton must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

AWARD

After considering the preceding Stipulated Factual Findings, the Applicable Legal Standards and Stipulated Recommendation of Expungement of the parties, the Panel has decided in full and final resolution of the issues submitted for determination, as follows:

1. In consideration of the release of Claimants' claims, and subject to payment of the agreed confidential settlement, Claimants' claims are dismissed with prejudice in their entirety as to all Respondents.
2. The Panel adopts the Stipulated Factual Findings and Applicable Legal Standards set forth above by the parties.
3. The Panel recommends the expungement of all references to the above-captioned arbitration from Respondent Lucille Prochoren's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Lucille Prochoren must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
4. The Panel recommends the expungement of all references to the above-captioned arbitration from Respondent Sue Gaines' (who also goes by Sue Mills Gaines and/or Sue Mills) registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Sue Gaines must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
5. The Panel recommends the expungement of all references to the above-captioned arbitration from Respondent Cheryl Nettleton's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Cheryl Nettleton must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
6. Unless specifically waived in writing by the NASD, 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 of the NASD Code of Arbitration Procedure, the Arbitration Panel has made the following affirmative findings of fact:

The Panel affirmatively finds that Lucille Prochoren, Sue Gaines (also known as Sue Mills Gaines) and Cheryl Nettleton were not involved in any alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

7. Each party shall bear its own costs, including attorney's fees.
8. All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD-DR received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	=	\$ 600.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm UBS is a party and the following fees are assessed:

Member Surcharge	=	\$ 2,800.00
Pre-Hearing Process Fee	=	\$ 750.00
<u>Hearing Process Fee</u>	=	<u>\$ 5,000.00</u>
Total Member Fees	=	\$ 8,550.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chairperson or the parties and the Panel. The following fees are assessed:

(1) Pre-hearing conference session with the Panel @ \$1,200.00/session	= \$1,200.00
Pre-hearing conference: March 15, 2005 1 session	

Total Forum Fees	= \$1,200.00
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1. Claimants have agreed to pay for \$600.00 of the forum fees.
2. Respondent UBS has agreed to pay for \$600.00 of the forum fees.

Fee Summary

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	=	\$ 600.00
Forum Fees	=	\$ 600.00
Total Fees	=	\$ 1,200.00
Less Payments	=	\$(1,800.00)
Refund Due Claimants	=	\$ (600.00)

2. Respondent UBS is charged with the following fees and costs:

Member Fees	=	\$ 8,550.00
Forum Fees	=	\$ 600.00
Total Fees	=	\$ 9,150.00
Less Payments	=	\$(8,550.00)
Balance Due NASD-DR	=	\$ 600.00

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

Parties' Signatures

DATED: September 15, 2005

JOHN H. McKINLEY
BROWN, HALL, SHORE & McKINLEY
Attorney for Claimants
BJJ COMPANY, LLC (formerly BJJ
COMPANY, INC.); FRANCES E.
BLINCOE and HELEN BLINCOE, Co-
Trustees of the F. E. BLINCOE TRUST
UAD 3/23/89; and F. EARL BLINCOE and
HELEN BLINCOE FAMILY LIMITED
PARTNERSHIP, a California Limited
Partnership

DATED: September __, 2005

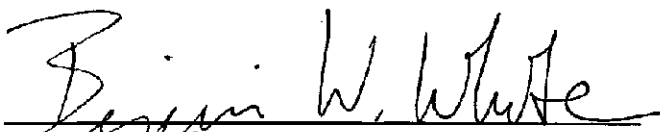
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BENJAMIN W. WHITE
KEESAL, YOUNG & LOGAN
Attorneys for Respondents
UBS FINANCIAL SERVICES, INC. (f/k/a
PaineWebber Inc.), LUCILLE PROCHOREN,
SUE GAINES, CHERYL NETTLETON and
JOHN S. BLINCOE

Parties' Signatures

DATED: September __, 2005

JOHN H. McKINLEY
BROWN, HALL, SHORE & McKINLEY
Attorney for Claimants
BJJ COMPANY, LLC (formerly BJJ
COMPANY, INC.); FRANCES E.
BLINCOE and HELEN BLINCOE, Co-
Trustees of the F. E. BLINCOE TRUST
UAD 3/23/89; and F. EARL BLINCOE and
HELEN BLINCOE FAMILY LIMITED
PARTNERSHIP, a California Limited
Partnership

DATED: September 14, 2005

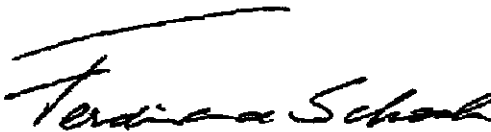


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SUE GAINES, CHERYL NETTLETON and
JOHN S. BLINCOE

ARBITRATION PANEL

Ferdinand Schoch	—	Public Arbitrator, Presiding Chair
Robin Lynn Berry	—	Public Arbitrator
Judith M. Rosenberg, Esq.	—	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Ferdinand Schoch
Chair, Public Arbitrator



Signature Date

Robin Lynn Berry
Public Arbitrator

Signature Date

Judith M. Rosenberg, Esq.
Non-Public Arbitrator

Signature Date



Date of Service

ARBITRATION PANEL

Ferdinand Schoch	—	Public Arbitrator, Presiding Chair
Robin Lynn Berry	—	Public Arbitrator
Judith M. Rosenberg, Esq.	—	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Ferdinand Schoch
Chair, Public Arbitrator

Signature Date

Robin Lynn Berry
Robin Lynn Berry
Public Arbitrator

2-24-05
Signature Date

Judith M. Rosenberg, Esq.
Non-Public Arbitrator

Signature Date

9/22/05
Date of Service

ARBITRATION PANEL

Ferdinand Schoch	—	Public Arbitrator, Presiding Chair
Robin Lynn Berry	—	Public Arbitrator
Judith M. Rosenberg, Esq.	—	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Ferdinand Schoch
Chair, Public Arbitrator

Signature Date

Robin Lynn Berry
Public Arbitrator

Signature Date

Judith M. Rosenberg
Judith M. Rosenberg, Esq.
Non-Public Arbitrator

9-22-2005
Signature Date

9/22/05
Date of Service