

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant/Counter-Respondent

UBS Financial Services, Inc.

and

Case Number: 04-06222
Hearing Site: Troy, Michigan

Respondents/Counter-Claimants

Wilmoco Capital Management, LLC and
Carl B. Smalls

NATURE OF DISPUTE

Member v. Customers and Customers v. Member

REPRESENTATION OF PARTIES

UBS Financial Services, Inc. ("Claimant") was represented by Sandra D. Grannum, Esq., Davidson & Grannum, LLP, Orangeburg, New York.

Wilmoco Capital Management, LLC ("Wilmoco") and Carl B. Smalls ("Smalls"), hereinafter collectively referred to as "Respondents," were represented by Stephon E. Johnson, Esq., Sanders & Johnson PLLC, Southfield, Michigan. Respondents were represented by Joseph H. Spiegel, Esq., Law Offices of Joseph H. Spiegel, P.C., Ann Arbor, Michigan until on or about March 14, 2005.

CASE INFORMATION

The Statement of Claim was filed on or about August 31, 2004. The Amended Statement of Claim was filed on or about October 14, 2004. The Submission Agreement of UBS Financial Services, Inc. was signed on or about August 26, 2004, by Gerald F. Spada, Corporate Vice President.

The Statement of Answer and Counter-Claim was filed jointly by Respondents on or about November 8, 2004. The Submission Agreement of Wilmoco Capital Management, LLC was signed on or about January 18, 2005. The Submission Agreement of Carl B. Smalls was signed on or about January 18, 2005.

Claimant filed an Answer to and Motion to Dismiss Counterclaim on or about November 16, 2004. Respondents filed a Motion to Strike Answer to Counter-Claim, Request to Strike Claimant's Answer to and Motion to Dismiss Counter-Claim and Request for Sanctions on or about December 10, 2004. Claimant filed a Response to Respondents' Motion on or about January 18, 2005.

CASE SUMMARY

Claimant asserted the following cause of action: failure to repay a debit balance. Claimant sought to recover open short securities positions in Wilmoco's account. The positions included LM Ericsson Telefon Co., Medco Health Solutions, Merck & Co., 21st Century Insur, Vivendi Unvl, Allied Irish Bks, and Albertsons, Inc.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Amended Statement of Claim fails to state a claim upon which relief can be granted; the Amended Statement of Claim is barred by the doctrine of assumption of risk, and the Amended Statement of Claim is barred by the doctrine of estoppel.

In their Counter-Claim, Respondents asserted claims for the return of wrongfully seized funds. Claimants denied the allegations made in the Counter-Claim.

RELIEF REQUESTED

Claimant requested an award in the amount of \$119,154.00 plus interest, \$17,000.00 in attorneys' fees plus interest for attorneys' fees, costs, fees disbursements, and additional attorneys' fees, and such other and further relief as the panel deemed just and equitable.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. Respondents requested damages of \$10,313.61, plus interest in their Counter-Claim.

OTHER ISSUES CONSIDERED & DECIDED

The panel denied Claimant's Motion to Dismiss Counterclaim and Respondents' Motion to Strike Answer to Counter-Claim, Request to Strike Claimant's Answer to and Motion to Dismiss Counter-Claim and Request for Sanctions.

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.) Respondent, Wilmoco Capital Management, LLC, is liable for and shall pay to Claimant, UBS Financial Services, Inc., the sum of \$114,722.77 in damages;

- 2.) Claimant's claims against Carl B. Smalls are denied and dismissed with prejudice;
- 3.) UBS Financial Services, Inc., is ordered to unfreeze the assets of Wilmoco Capital Management, LLC in the amount of \$10,313.61;
- 4.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 5.) Any relief not specifically enumerated, including sanctions and attorneys' fees, is hereby denied with 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	= \$ 1,000.00
Counter-Claim filing fee	= \$ 125.00

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. In this matter, the member firm is UBS Financial Services, Inc.

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

Adjournment Fees

Adjournments requested during these proceedings:

June 1-3, 2005, adjournment by Respondents	= \$ 1,125.00
September 22-23, 2005, adjournment by Respondents	= \$ 1,500.00

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:

One (1) Pre-hearing session with a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: March 14, 2005	1 session

Three (3) Pre-hearing sessions with Panel x \$1,125.00 = \$ 3,375.00

Pre-hearing conferences: February 14, 2005 1 session
May 3, 2005 1 session
June 3, 2005 1 session

Nine (9) Hearing sessions x \$1,125.00 = \$10,125.00

Hearing Dates: August 16, 2005 2 sessions
August 17, 2005 2 sessions
August 18, 2005 1 session
September 29, 2005 2 sessions
September 30, 2005 2 sessions

Total Forum Fees = \$13,950.00

The Arbitration Panel has assessed \$6,975.00 of the forum fees to UBS Financial Services, Inc.

The Arbitration Panel has assessed \$6,975.00 of the forum fees to Wilmoco Capital Management, LLC.

Fee Summary

Claimant, UBS Financial Services, Inc., is solely liable for:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 5,200.00
Forum Fees	= \$ 6,975.00
Total Fees	= \$13,175.00
<u>Less payments</u>	<u>= \$ 7,325.00</u>
Balance Due NASD Dispute Resolution	= \$ 5,850.00

Respondents, Wilmoco Capital Management, LLC and Carl B. Smalls, are jointly and severally liable for:

Adjournment Fees	= \$ 2,625.00
Counter-Claim Filing Fee	= \$ 125.00
Total Fees	= \$ 2,750.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 2,750.00

Respondents, Wilmoco Capital Management, LLC is solely liable for:

Forum Fees	= \$ 6,975.00
Total Fees	= \$ 6,975.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 6,975.00

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

ARBITRATION PANEL

Patrick R. Sughrue, Esq. - Public Arbitrator, Presiding Chair
Mayra Adela Rodriguez, Esq. - Public Arbitrator
John Olcott Hastings - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Patrick R. Sughrue, Esq.
Patrick R. Sughrue, Esq.
Public Arbitrator, Presiding Chair

10/03/05
Signature Date

Mayra Adela Rodriguez, Esq.
Mayra Adela Rodriguez, Esq.
Public Arbitrator

Signature Date

/s/ John Olcott Hastings
John Olcott Hastings
Non-Public Arbitrator

10/03/05
Signature Date

10/03/05
Date of Service (For NASD office use only)

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John Olcott Hastings
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10/3/05