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**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant

Joseph J. Shunnarah

Case Number: 04-06371

Names of the Respondents

UBS PaineWebber, Inc.

Larry Salem

Jeff Gaskin

Hearing Site: Birmingham, AL

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Nature of the Dispute: Customer vs. Member and Associated Person.

**REPRESENTATION OF PARTIES**

For Joseph J. Shunnarah, hereinafter referred to as "Claimant": Richard S. Frankowski, Esq.,  
Whatley Drake L.L.C., Birmingham, AL.

For Respondents UBS PaineWebber, Inc. ("UBS") and Larry Salem ("Salem"), hereinafter  
collectively referred to as "Respondents": Will Hill Tankersley, Esq. and A. Kelly Bingham,  
Esq., Balch & Bingham, LLP, Birmingham, AL.

For Respondent Jeff Gaskin ("Gaskin"): Randi Perry Spallina, Associate General Counsel, UBS,  
Fort Lauderdale, FL.

**CASE INFORMATION**

Statement of Claim filed on or about: September 7, 2004.

Claimant signed the Uniform Submission Agreement: June 2, 2003.

Respondents' Answer to Statement of Claim and Motion to Dismiss filed on or about: December  
3, 2004.

Respondent UBS signed the Uniform Submission Agreement: September 17, 2004.

Respondent Salem signed but did not date the Uniform Submission Agreement.

Respondent Gaskin did not file an executed Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty; unsuitability;  
churning; fraud; negligence; violations of state and federal securities laws; violations of NASD  
and NYSE rules; and, failure to supervise. The causes of action relate to the purchase of  
unspecified securities products in Claimant's account.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the  
Statement of Claim, and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages of approximately \$200,000.00, disgorgement and restitution, lost opportunity cost, attorneys' fees, costs, pre- and post-judgment interest, punitive damages, and such other relief as the undersigned arbitrators (the "Panel") deemed just and proper.

Respondents requested dismissal of the Statement of Claim and assessment of all costs and fees against Claimant.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondent Gaskin did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and is bound by the determination of the Panel on all issues submitted.

On or about October 13, 2005, Claimant filed a Stipulation of Dismissal, without prejudice, of all claims against Respondent Gaskin.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimant's Statement of Claim is dismissed, with prejudice.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages, are denied.

### **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	= \$ 300.00
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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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent UBS is a member firm and a party.

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

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were assessed during these proceedings.

**Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No three-day cancellation fees were assessed during these proceedings.

**Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

No injunctive relief fees were assessed during these proceedings.

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A 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:

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00/session			= \$	900.00
Pre-hearing conferences:	September 6, 2005	1 session		
	September 20, 2005	1 session		
One (1) Pre-hearing session with the Panel @ \$1,125.00/session			= \$	1,125.00
Pre-hearing conference:	February 15, 2005	1 session		
Five (5) Hearing sessions @ \$1,125.00/session			= \$	5,625.00
Hearing Dates:	October 5, 2005	3 sessions		
	October 6, 2005	2 sessions		
<hr/> Total Forum Fees			= \$	7,650.00

The Panel has assessed forum fees of \$3,825.00 to Claimant.

The Panel has assessed forum fees of \$3,825.00 to Respondent UBS.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during these proceedings.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$ 3,825.00</u>
Total Fees	= \$ 4,125.00
<u>Less payments</u>	<u>= \$ 1,425.00</u>
Balance Due NASD Dispute Resolution	= \$ 2,700.00

Respondent UBS is solely liable for:

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	<u>= \$ 3,825.00</u>
Total Fees	= \$ 9,025.00
<u>Less payments</u>	<u>= \$ 5,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 3,825.00

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

**ARBITRATION PANEL**

J. Maxwell Williams, Esq.	- Public Arbitrator, Presiding Chairperson
Earle Park Kelley	- Public Arbitrator
Robert E. Graves	- Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
J. Maxwell Williams, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

/s/  
Earle Park Kelley  
Public Arbitrator

Signature Date

/s/  
Robert E. Graves  
Non-Public Arbitrator

Signature Date

October 11, 2005  
Date of Service (For NASD Dispute Resolution use only)

OCT. 11. 2005 11:38AM

NASD BOCA RATON

NO. 236

P. 5

NASD Dispute Resolution

Arbitration No. 04-06371

Award Page 4 of 4Fee Summary

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ARBITRATION PANEL

J. Maxwell Williams, Esq.

Barle Park Kelley

Robert E. Graves

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator
- Non-Public Arbitrator

Concurring Arbitrators' Signatures

J. Maxwell Williams  
J. Maxwell Williams, Esq.  
Public Arbitrator, Presiding Chairperson

10-11-05  
Signature Date

Barle Park Kelley  
Public Arbitrator

Signature Date

Robert E. Graves  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution use only)

OCT. 11. 2005 1:25PM NASD BOCA RATON

NO. 240 P. 2

**NASD Dispute Resolution**

Arbitration No. 04-06371

Award Page 4 of 4**Fee Summary**

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- Public Arbitrator, Presiding Chairperson

Earle Park Kelley

- Public Arbitrator

Robert E. Graves


- Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

J. Maxwell Williams, Esq.

Signature Date

Public Arbitrator, Presiding Chairperson



Earle Park Kelley

10/11/2005  
Signature Date

Public Arbitrator

Robert E. Graves

Signature Date

Non-Public Arbitrator

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**NASD Dispute Resolution**

Arbitration No. 04-06371

Award Page 4 of 4**Fee Summary****Claimant is solely liable for:**

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- Public Arbitrator, Presiding Chairperson

Earle Park Kelley

- Public Arbitrator

Robert E. Graves

- Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

J. Maxwell Williams, Esq.

Signature Date

Public Arbitrator, Presiding Chairperson

Earle Park Kelley

Signature Date

Public Arbitrator



Robert E. Graves

10-11-05

Non-Public Arbitrator

Signature DateDate of Service (For NASD Dispute Resolution use only)