

**STIPULATED AWARD  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Claimants

Bruce J. Coan, Bruce J. Coan Profit Sharing Plan,  
M. Joanne Dodd, M. Joanne Dodd Living Trust,  
M. Joanne Dodd IRA, Alice Lahren  
and Alice Lahren IRA

v.

04-06590  
Denver, Colorado

Respondents

UBS Financial Services, Inc.,  
Nicholas R. Cladis and Patrick P. Davison

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**NATURE OF DISPUTE**

Customers v. Member and Associated Persons

**REPRESENTATION OF PARTIES**

Bruce J. Coan, Bruce J. Coan Profit Sharing Plan, M. Joanne Dodd, M. Joanne Dodd Living Trust, M. Joanne Dodd IRA, Alice Lahren and Alice Lahren IRA ("**Claimants**") were represented by Linda M. Deola, Esq., of Reynolds, Motl & Sherwood, P.L.L.P., Helena, Montana.

UBS Financial Services, Inc. ("**UBS**") was represented by Holly Stein Sollod, Esq., of Holland & Hart, LLP, Denver, Colorado.

Nicholas R. Cladis ("**Cladis**") was represented by John G. Crist, Esq., of the Crist Law Firm, Billings, Montana.

Patrick P. Davison ("**Davison**") was represented by Mark D. Parker, Esq., of Parker, Heitz & Cosgrove, PLLC, Billings, Montana.

**CASE INFORMATION**

The Statement of Claim was filed on or about September 15, 2004. The Submission Agreement of Claimants, Bruce J. Coan, Individually and on behalf of the Bruce J. Coan Profit Sharing Plan, was signed on or about September 24, 2004. The Submission Agreement of Claimants, M. Joanne Dodd, Individually and on behalf of the M. Joanne Dodd Living Trust and the M. Joanne Dodd IRA, was signed on or about September 27,

2004. The Submission Agreement of Claimants, Alice Lahren, Individually and on behalf of the Alice Lahren IRA, was signed on or about September 25, 2004.

A Statement of Answer was filed jointly by UBS and Cladis on or about January 7, 2005. The Submission Agreement of UBS was signed on or about January 11, 2005. The Submission Agreement of Cladis was signed on or about January 7, 2005.

A Statement of Answer was filed by Davison on or about January 10, 2005. The Submission Agreement of Davison was signed on or about March 27, 2005.

UBS and Cladis filed a Motion to Sever on or about January 28, 2005. Davidson filed a Joinder as to the Motion to Sever on or about February 4, 2005. Claimants filed a Response in Opposition to the Motion to Sever on or about February 11, 2005.

### **CASE SUMMARY**

Claimants asserted causes of action including the following: respondeat superior, negligence, violation of the Montana Securities Act, constructive fraud, fraudulent concealment, misrepresentations and breach of fiduciary duty. Claimants alleged unsuitability and unauthorized trading in their UBS accounts. Claimants also alleged that Respondents, Cladis, Davidson and UBS, should be liable for the losses sustained in their accounts.

UBS and Cladis denied the allegations set forth in the Statement of Claim and asserted affirmative defenses including the following: the claims are barred in whole or in part and/or their damages must be reduced to the extent of the contributory negligence of Claimants; the claims are barred in whole or in part to the extent that UBS did not cause Claimants' damages, and their losses were caused by other factors, including market conditions; the claims are barred in whole or in part by the doctrines of waiver, estoppel and ratification; the claims are barred in whole or in part by Claimants' own conduct and lack of due diligence; and the claims are barred to the extent that Claimants failed to take reasonable steps to mitigate their damages.

Davison denied the allegations set forth in the Statement of Claim and asserted defenses including the following: to the extent any of the Claimants are pursuing a cause of action for negligence, their loss can be attributed to their own conduct and negligence; Claimants' allegations do not state a claim of relief for which any monetary recovery can be had against Davison; the Claimants assumed the financial risks associated with the stock market; and Davison fulfilled all of his obligations concerning this matter and therefore should be absolved from any claims set forth by Claimants.

### **RELIEF REQUESTED**

Claimants requested an award of \$1,600,000 in compensatory damages, plus lost opportunity damages, interest, punitive damages, attorneys' fees, costs and any other relief that Panel deemed just and proper.

UBS and Cladis requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. In addition, UBS and Cladis requested an expungement of all references to the above-captioned arbitration from Cladis' registration records maintained by the NASD Central Registration Depository ("CRD").

Davison requested that the claims asserted against him be denied in their entirety and that he be awarded his costs and attorneys' fees. In addition, Davison requested an expungement of all references to the above-captioned arbitration from his registration records maintained by the NASD Central Registration Depository ("CRD").

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

On or about March 3, 2005, Claimants, M. Joanne Dodd, M. Joanne Dodd Living Trust, M. Joanne Dodd IRA, Alice Lahren and Alice Lahren IRA, submitted a Notice of Dismissal of Respondent, Nicholas R. Cladis, without prejudice.

On or about March 8, 2005 Claimants, , M. Joanne Dodd, M. Joanne Dodd Living Trust, M. Joanne Dodd IRA, Alice Lahren and Alice Lahren IRA, informed NASD Dispute Resolution that all of their claims against Respondents were resolved due to a confidential settlement reached between the parties. However, Claimants, Bruce J. Coan, Bruce J. Coan Profit Sharing Plan, still wished to proceed forward with their claims against remaining Respondents.

On or about July 7, 2005, Claimants, Bruce J. Coan, Bruce J. Coan Profit Sharing Plan withdrew their prior dismissal of Respondent, Nicholas R. Cladis and reasserted all claims asserted against Respondent, Nicholas R. Cladis.

On or about January 12, 2006, Claimants submitted a proposed Stipulated Award in which they confirmed that they voluntarily dismissed all claims against Respondents with prejudice. Claimants stated that Respondent, Nicholas R. Cladis, was not involved in the alleged investment sales practice violation and that all claims asserted against him were based solely on his having shared in commissions on the accounts held by Claimants and not based on any investment advice provided to Claimants during the time period in the claim. The Claimants recommended the expungement of all references on the above-referenced arbitration from Respondent Cladis' registration records maintained by CRD.

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, having been resolved through stipulation, are dismissed with prejudice in their entirety;
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent, Nicholas R. Cladis' registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent, Nicholas R. Cladis, must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

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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, and based on the sworn statement of Respondent, Nicholas R. Cladis, and the supporting statement of Claimants, the arbitration panel has made the following affirmative findings of fact:

- Nicholas R. Cladis, the registered person, was not involved in the alleged investment related sales practice violation, forgery, theft, misappropriation, or conversion of funds.
3. 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
  4. 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. By stipulation of the parties, any fees incurred and assessed relating to the issuance of this Award and in the expungement process are to be born jointly and severally by UBS and Cladis. The assessment of forum fees later in this Award takes into consideration said stipulation to the extent consistent with NASD procedures, given that Cladis was not a party during the April

22, 2005, pre-hearing conference call due to the Notice of Dismissal filed by Claimant on March 3, 2005.

### **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 = \$ 500

#### **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	= \$ 2,800
Pre-hearing process fee	= \$ 750
Hearing process fee	= \$ 5,000

#### **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:

Two (2) Pre-hearing sessions with Panel x \$ 1,200 = \$ 2,400

Pre-hearing conferences:	April 22, 2005	1 session
	April 25, 2006	1 session

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Total Forum Fees = \$ 2,400

The Arbitration Panel has assessed \$ 400 of the forum fees to Bruce J. Coan and Bruce J. Coan Profit Sharing Plan.

The Arbitration Panel has assessed \$ 400 of the forum fees to UBS Financial Services, Inc.

The Arbitration Panel has assessed \$ 400 of the forum fees to Patrick P. Davidson.

The Arbitration Panel has assessed \$ 1,200 of the forum fees jointly and severally to UBS Financial Services, Inc., and Nicholas R. Cladis.

**FEE SUMMARY**

Claimants, Bruce J. Coan, Bruce J. Coan Profit Sharing Plan, M. Joanne Dodd, M. Joanne Dodd Living Trust, M. Joanne Dodd IRA, Alice Lahren and Alice Lahren IRA, are jointly and severally liable for:

Initial Filing Fee	= \$ 500
Total Fees	= \$ 500
Less payments	= \$ 500
Balance Due NASD Dispute Resolution	= \$ 0

Claimants, Bruce J. Coan, Bruce J. Coan Profit Sharing Plan, are jointly and severally liable for:

Forum Fees	= \$ 400
Total Fees	= \$ 400
Less payments	= \$ 1,200
Balance Refunded By NASD Dispute Resolution	= \$ 800

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

Member Fees	= \$ 8,550
Total Fees	= \$ 8,950
Less payments	= \$ 8,550
Balance Due NASD Dispute Resolution	= \$ 400

Respondent, Patrick P. Davidson, is liable for:

Forum Fees	= \$ 400
Total Fees	= \$ 400
Less payments	= \$ 0
Balance Due NASD Dispute Resolution	= \$ 400

Respondents, UBS Financial Services, Inc., and Nicholas R. Cladis, are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 1,200
<u>Total Fees</u>	= \$ 1,200
<u>Less payments</u>	= \$ 0
<u>Balance Due NASD Dispute Resolution</u>	= \$ 1,200

**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**

John Fleming Kelly, Esq. - Public Arbitrator, Presiding Chair  
Marilyn R. Lewis - Public Arbitrator  
Stanley H. Marks, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

\_\_\_\_\_  
John Fleming Kelly, Esq.  
Public Arbitrator, Presiding Chair

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Marilyn R. Lewis  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Stanley H. Marks, Esq.  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

7/12/06  
\_\_\_\_\_  
Date of Service (NASD use only)

NASD Dispute Resolution

Arbitration No. 04-08380

Stipulated Award Page 7 of 7

Respondents, UBS Financial Services, Inc., and Nicholas R. Gladis, are jointly and severally liable for:

Forum Fees	= \$ 1,200
Total Fees	= \$ 1,200
Less payments	= \$ 0
Balance Due NASD Dispute Resolution	= \$ 1,200

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

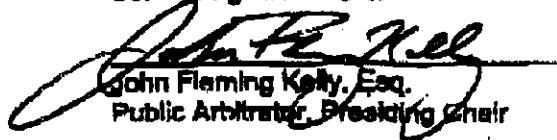
**ARBITRATION PANEL**

John Fleming Kelly, Esq. - Public Arbitrator, Presiding Chair

Marilyn R. Lewis - Public Arbitrator

Stanley H. Marks, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

  
John Fleming Kelly, Esq.  
Public Arbitrator, Presiding Chair

  
Signature Date: June 21, 2006

Marilyn R. Lewis  
Public Arbitrator

Signature Date: \_\_\_\_\_

Stanley H. Marks, Esq.  
Non-Public Arbitrator

Signature Date: \_\_\_\_\_

7/12/06  
Date of Service (NASD use only)



Respondents, UBS Financial Services, Inc., and Nicholas R. Gladis, are jointly and severally liable for:

Forum Fees	= \$ 1,200
Total Fees	= \$ 1,200
Less payments	= \$ 0
Balance Due NASD Dispute Resolution	= \$ 1,200

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**

John Fleming Kelly, Esq. - Public Arbitrator, Presiding Chair

Marilyn R. Lewis - Public Arbitrator

Stanley H. Marks, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

John Fleming Kelly, Esq.  
Public Arbitrator, Presiding Chair

Signature Date

Marilyn R. Lewis

Marilyn R. Lewis  
Public Arbitrator

July 17, 2006  
Signature Date

Stanley H. Marks, Esq.  
Non-Public Arbitrator

Signature Date

7/18/06  
Date of Service (NASD use only)

Respondents, UBS Financial Services, Inc., and Nicholas R. Cladis, are jointly and severally liable for:

Forum Fees	= \$ 1,200
Total Fees	= \$ 1,200
Less payments	= \$ 0
Balance Due NASD Dispute Resolution	= \$ 1,200

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**

John Fleming Kelly, Esq. - Public Arbitrator, Presiding Chair  
Marilyn R. Lewis - Public Arbitrator  
Stanley H. Marks, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

\_\_\_\_\_  
John Fleming Kelly, Esq.  
Public Arbitrator, Presiding Chair

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Marilyn R. Lewis  
Public Arbitrator

\_\_\_\_\_  
Signature Date

  
\_\_\_\_\_  
Stanley H. Marks, Esq.  
Non-Public Arbitrator

7-18-06  
\_\_\_\_\_  
Signature Date

7/18/06  
\_\_\_\_\_  
Date of Service (NASD use only)