
Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Kevin Sosa

Case Number: 04-07462

Names of the Respondents

UBS PaineWebber, Inc.

Eugene B. Land

Richard S. Marcatos

Richard Reinhardt

Hearing Site: Boca Raton, Florida

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

REPRESENTATION OF PARTIES

For Kevin Sosa, hereinafter referred to as "Claimant": John R. Kiefner, Jr., Esq., Kiefner & Hunt, P.A., St. Petersburg, Florida.

For UBS PaineWebber, Inc. ("UBS"), Eugene B. Land ("Land"), Richard S. Marcatos ("Marcatos"), and Richard Reinhardt ("Reinhardt"), hereinafter collectively referred to as "Respondents": Rebecca E. Swenson, Associate General Counsel, UBS Financial Services Inc., Fort Lauderdale, Florida, and Daniel S. Newman, P.A., Broad and Cassel, Miami, Florida.

CASE INFORMATION

Statement of Claim filed on or about: October 22, 2004.

Claimant signed the Uniform Submission Agreement: October 22, 2004.

Statement of Answer and Motion to Dismiss filed by Respondents UBS, Land and Marcatos on or about: January 21, 2005.

Respondent UBS signed the Uniform Submission Agreement: November 4, 2004.

Respondent Land signed the Uniform Submission Agreement: February 25, 2005.

Respondent Marcatos did not file an executed Uniform Submission Agreement.

Respondent Reinhardt did not file a Statement of Answer nor an executed Uniform Submission Agreement.

Reply to Affirmative Defenses filed by Claimant on or about: January 28, 2005.

Motion to Permit Clarification and to Strike filed by Claimant on or about: March 10, 2005.

Response to Respondents' Motion to Dismiss filed by Claimant on or about: February 4, 2005.

Respondent Marcato's Reply in Further Support of Motion to Dismiss filed on or about: February 11, 2005.

Respondent Marcato's Second Reply in Further Support of Motion to Dismiss filed on or about: February 11, 2005.

Claimant's Reply to Respondents' Reply in Further Support of Motion to Dismiss and Respondents' Second Reply in Further Support of Motion to Dismiss filed on or about: February 21, 2005.

Respondent Marcato's Third Reply in Further Support of Motion to Dismiss filed on or about: March 4, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: failure to supervise; negligence; gross negligence; breach of fiduciary duty; common law fraud/fraud in the inducement; violations of specific NASD conduct rules-negligence; breach of contract; churning; and dispute arising in connection with the business of any member of the Association. The causes of action relate to the purchase of stock in Claimant's account, including, but not limited to, Redback Networks and Kraft Foods, Inc.

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

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$71,316.84, statutory interest, punitive damages in an unspecified amount, costs and such other relief as the Panel deemed just and appropriate.

Respondents UBS, Land and Marcatos requested that the Panel dismiss the Statement of Claim in its entirety, assess all forum fees against Claimant, enter an order directing the NASD to expunge all references to this matter from the NASD Central Registration Depository (the "CRD") with respect to Respondents Land and Marcatos, and enter such other and further relief as it deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Marcatos 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 having answered the claim and appeared, is bound by the determination of the Panel on all issues submitted.

Respondent Reinhardt did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and having filed a Joint Motion for Hearing To Enter Stipulated Award is bound by the determination of the Panel on all issues submitted.

On or about November 8, 2004, Claimant filed with NASD a Notice of Voluntary Dismissal of Respondent Reinhardt.

On or about March 31, 2005, Claimant filed with NASD a Notice of Voluntary Dismissal of Respondent Marcatos.

On or about April 2, 2005, the Panel issued an order which granted Claimant's Motion to Permit Clarification and to Strike, which, pursuant to Claimant's request, struck the phrase, "pursuant to Section 517.211" from each and every "Wherefore" clause contained in Claimant's Statement of Claim.

On or about April 6, 2005, the Panel issued an order which stated that Respondents' Motion to Dismiss would be addressed at the evidentiary hearing.

On or about August 9, 2005, the parties notified NASD Dispute Resolution that they had settled this matter.

On or about September 30, 2005, the parties submitted to NASD Dispute Resolution a Joint Motion for Hearing To Enter Stipulated Award and proposed Stipulated Award ("Joint Motion"), which included a request to expunge the CRD records of Respondents Marcatos and Reinhardt.

On November 16, 2005 the Panel granted the parties' Joint Motion and held a hearing on the parties' request to have the CRD records of Respondents Marcatos and Reinhardt expunged. During the hearing, the Claimant, through his counsel, confirmed that he dismissed all claims against Respondents Marcatos and Reinhardt with prejudice several months prior to entering a settlement with Respondent Land and Respondent Reinhardt was dismissed before the filing of the Statement of Answer.

Claimant's counsel also advised the Panel that Respondent Reinhardt was erroneously named as a party to this arbitration, and that Respondent Marcatos did not make any securities recommendations to the Claimant and that he did not serve as the broker of record for the Claimant's account during the relevant time period.

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

AWARD

After considering the pleadings, the Joint Motion, oral argument by the parties, the evidence presented during the telephonic hearing conducted on November 16, 2005, and NASD Rule 2130, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

- 1) All claims against Respondents Marcatos and Reinhardt are dismissed with prejudice.
- 2) Respondents Marcatos and Reinhardt were not involved in the alleged investment-related sales practice violations described in the Statement of Claim and the claims alleged against Respondents Marcatos and Reinhardt were clearly erroneous based upon the following:
 - a) Respondent Reinhardt had no involvement with Claimant, was never responsible for Claimant's account, never made any securities recommendations to Claimant, and did not fail to supervise any activity relating to Claimant's account;
 - b) Respondent Marcatos did not become the broker of record for Claimant's account until after the occurrence of the transactions that Claimant alleged in the Statement of Claim to have been sales practice violations. Respondent Marcatos became the broker of record shortly before the account closed as a result of Respondent Land taking a short-term medical leave. During that time, Respondent Marcatos did not make any securities recommendations to Claimant;
 - c) Respondents Marcatos and Reinhardt were dismissed several months prior to the settlement and they were not parties to the Settlement Agreement; and
 - d) Respondent Land was the registered representative servicing Claimant's account during the time period that the events described in the Statement of Claim occurred.
- 3) The Panel recommends the expungement of all references to the above-captioned arbitration from

Respondents Marcatos' and Reinhardt's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notice to Members 04-16, Respondents Marcatos and Reinhardt must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

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 affirmative findings of fact:
the registered persons were not involved in the alleged investment-related sales practice violation; and,
the claims were clearly erroneous.

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	= \$225.00
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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, UBS is a member firm and a party.

Member surcharge	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,700.00
Total Member Fees	= \$3,550.00

Adjournment Fees

No adjournments were requested in this matter.

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 in this matter.

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.

Injunctive relief fees were not assessed in this matter.

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 the Panel @ \$750.00	= \$1,500.00
Pre-hearing conferences: March 15, 2005 1 session	
November 16, 2005 1 session	
One (1) Pre-hearing session with the Chairperson @ \$450.00	= \$ 450.00
June 28, 2005 1 session	
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Total Forum Fees	= \$1,950.00

Pursuant to the agreement of the parties the Panel has assessed \$600.00 of the forum fees to Claimant and \$1,350.00 of the forum fees jointly and severally to Respondents.

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 are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred in this matter.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$225.00
Forum Fees	= \$600.00
Retained Hearing Session Deposit pursuant to Rule 10332(f) of Code	= \$150.00
Total Fees	= \$975.00
Less Payments	= \$975.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent UBS is solely liable for:

Member Fees	= \$3,550.00
Total Fees	= \$3,550.00
Less Payments	= \$3,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$1,350.00
<u>Total Fees</u>	= \$1,350.00
<u>Less Payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$1,350.00

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

ARBITRATION PANEL

Paul Sidney Elliott, J.D.	-	Public Arbitrator, Presiding Chairperson
Colleen Grace, Esq.	-	Public Arbitrator
James R. Boyer	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
Paul Sidney Elliott, J.D.
Public Arbitrator, Presiding Chairperson

December 9, 2005
Signature Date

/s/
Colleen Grace, Esq.
Public Arbitrator

December 13, 2005
Signature Date

/s/
James R. Boyer
Non-Public Arbitrator

December 10, 2005
Signature Date

December 14, 2005
Date of Service (For NASD Dispute Resolution office use only)

Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$1,350.00
<u>Total Fees</u>	= \$1,350.00
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Colleen Grace, Esq.
James R. Boyer

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

Concurring Arbitrators' Signatures



Paul Sidney Elliott, J.D.
Public Arbitrator, Presiding Chairperson

12/9/05
Signature Date

Colleen Grace, Esq.
Public Arbitrator

Signature Date

James R. Boyer
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

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Arbitration No. 04-07462
Stipulated Award Page 6 of 6

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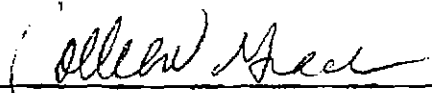
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Collen Grace, Esq.	-	Public Arbitrator
James R. Boyer	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Paul Sidney Elliott, J.D.
Public Arbitrator, Presiding Chairperson

Signature Date



Collen Grace, Esq.
Public Arbitrator



Signature Date

James R. Boyer
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$1,350.00
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<u>Less Payments</u>	= \$ 0.00
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Collen Grace, Esq.	- Public Arbitrator
James R. Boyer	- Non-Public Arbitrator

Concurring Arbitrators' Signatures

Paul Sidney Elliott, J.D.
Public Arbitrator, Presiding Chairperson

Signature Date

Colleen Grace, Esq.
Public Arbitrator

Signature Date

James R. Boyer
James R. Boyer
Non-Public Arbitrator

12-10-05
Signature Date

Date of Service (For NASD Dispute Resolution office use only)