

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

David K.C. Cooper and Amy Lee Cooper

Case Number: 04-07570

Names of the Respondents

UBS Financial Services, Inc.,

Mark Province,

Mark Sutton

Christopher D. Dickens.

Hearing Site: Pittsburgh, PA

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

REPRESENTATION OF PARTIES

Claimants, David K.C. Cooper and Amy Lee Cooper, hereinafter collectively referred to as "Claimants", were represented by Vicki Kuftic Horne, Esq., Attorney at Law, Pittsburgh, Pennsylvania.

Respondents, UBS Financial Services, Inc. ("UBS"), Mark Province ("Province"), Mark Sutton ("Sutton"), and Christopher D. Dickens ("Dickens"), hereinafter collectively referred to as "Respondents", were represented by Dan A. Rosenbaum, Esq., UBS Financial Services, Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed on October 29, 2004.

Claimants signed the Uniform Submission Agreement on October 26, 2004.

Claimants filed a Response to Respondent Sutton's Motion to Dismiss on June 10, 2005.

Statement of Answer filed by Respondents on February 11, 2005.

Respondent Sutton filed a Motion to Dismiss on February 11, 2005.

Reply Memorandum in Further Support of the Motion to Dismiss filed by Respondent Sutton on June 24, 2005.

A representative of Respondent UBS executed the Uniform Submission Agreement on February 8, 2005

Respondent Province signed the Uniform Submission Agreement on January 21, 2005.

Respondent Sutton signed the Uniform Submission Agreement on January 13, 2005.

Respondent Dickens signed the Uniform Submission Agreement on February 7, 2005.

CASE SUMMARY

Claimants asserted the following causes of action, among others: fraud, misrepresentation, *respondeat superior*, breach of fiduciary duty, negligence, failure to supervise, breach of contract, violations of Oklahoma Securities Act, and violations of Massachusetts statutes and laws. The causes of action relate to various unspecified securities.

Unless specifically admitted in their Statement of Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: Respondents handled Claimants' claims properly, in good faith, in a commercially reasonable manner, and in accordance with the highest standards in the securities industry; Claimants authorized and/or directed every transaction in the accounts at issue; the Statement of Claim is barred under the principles of ratification, waiver and estoppel; and statutes of limitation.

RELIEF REQUESTED

Claimants in their Statement of Claim requested:

Compensatory Damages	\$330,000.00
Punitive Damages	amount unspecified
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondents in their Statement of Answer requested that the Statement of Claim be dismissed in its entirety, and that the Arbitration Panel (the "Panel") award Respondents their costs in defending this action.

OTHER ISSUES CONSIDERED AND DECIDED

On July 11, 2005 the Panel granted Respondent Sutton's Motion to Dismiss.

During the hearing on the merits and at the conclusion of Claimants' case-in-chief, Respondents moved the Panel to dismiss all claims against them. Claimants made no objection to the dismissal of their claims against Respondent Dickens. The Panel granted the motion as to Respondent Dickens and denied the motion as to all other Respondents.

Respondents Province and Dickens requested that the Panel recommend the expungement of all reference to this arbitration from their files maintained by the NASD Central Registration Depository ("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.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent UBS is liable to and shall pay to Claimants compensatory damages in the amount of \$64,872.00, plus interest at the rate of 6% on that amount. Interest shall be calculated on a simple basis and shall accrue from April 10, 2006 through the date the Award is paid in full;
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Province's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Province must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

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, the Panel has made the following affirmative finding of fact:

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds;

3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Dickens' registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Dickens must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

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, the Panel has made the following affirmative findings of fact:

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds and the claim, allegation, or information is factually impossible or clearly erroneous;

4. All claims for punitive damages and attorneys' fees are denied in their entirety;
5. The parties shall bear their respective costs, including attorneys' fees, except as Fees are

specifically addressed below; and

6. Any and all relief not specifically addressed herein is denied in its entirety.

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

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Respondent UBS is a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00
Total Member Fees	= \$5,200.00

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:

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: June 21, 2005 1 session	

Two (2) Pre-hearing sessions with Panel @ \$1,125.00	= \$2,250.00
Pre-hearing conferences: May 13, 2005 1 session	
July 8, 2005 1 session	

Eleven (11) Hearing sessions @ \$1,125.00	= \$12,375.00
Hearing Dates: January 10, 2006 2 sessions	
January 11, 2006 2 sessions	
January 12, 2006 2 sessions	
January 13, 2006 2 sessions	
March 31, 2006 2 sessions	
April 6, 2006 1 session	

Total Forum Fees	= \$15,075.00
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1. The Panel has assessed \$1,125.00 of the forum fees jointly and severally to Claimants.
2. The Panel has assessed \$12,375.00 of the forum fees to Respondent UBS.

3. The Panel has assessed \$1,012.50 of the forum fees to Respondent Sutton.
4. The Panel has assessed \$562.50 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 not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. Respondent UBS requested tape duplication = \$ 195.00
2. Claimants requested tape duplication = \$ 195.00

FEE SUMMARY

1. Claimants are jointly and severally assessed and shall pay the following fees:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 1,125.00
<u>Administrative Costs</u>	<u>= \$ 195.00</u>
Total Fees	= \$ 1,620.00
<u>Less payments</u>	<u>= \$ 1,620.00</u>
Balance Due NASD Dispute Resolution	= \$ 00.00
2. Respondent UBS is assessed and shall pay the following fees:

Member Fees	= \$ 5,200.00
Forum Fees	= \$12,375.00
<u>Administrative Costs</u>	<u>= \$ 195.00</u>
Total Fees	= \$17,770.00
<u>Less payments</u>	<u>= \$ 5,200.00</u>
Balance Due NASD Dispute Resolution	= \$12,570.00
3. Respondent Sutton is assessed and shall pay the following fees:

Forum Fees	= \$ 1,012.50
Total Fees	= \$ 1,012.50
<u>Less payments</u>	<u>= \$ 00.00</u>
Balance Due NASD Dispute Resolution	= \$ 1,012.50
4. Respondents are jointly and severally assessed and shall pay the following fees:

Forum Fees	= \$ 562.50
Total Fees	= \$ 562.50
<u>Less payments</u>	<u>= \$ 00.00</u>
Balance Due NASD Dispute Resolution	= \$ 562.50

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

ARBITRATION PANEL

Frank C. Fogl, Fr., Esq.
J. Deron Gabriel, Esq.
Robert Shiffra, Esq.

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

FROM :

FAX NO. :

Apr. 19 2006 04:43PM P2

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Concurring Arbitrators' Signatures


Frank C. Fogl, Fr., Esq.
Public Arbitrator, Presiding Chairperson

4/19/06
Signature Date

J. Deron Gabriel, Esq.
Public Arbitrator, Panelist

Signature Date

Robert Shiffra, Esq.
Non-Public Arbitrator, Panelist

Signature Date

4/19/06
Date of Service (For NASD Dispute Resolution office use only)

04-17-06 05:46pm From-NASD DISPUTE RESOLUTION

202 728 6952

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Concurring Arbitrators' Signatures

Frank C. Fogl, Fr., Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

J. Deron Gabriel, Esq.
J. Deron Gabriel, Esq.
Public Arbitrator, Panelist

4-18-06
Signature Date

Robert Shiffra, Esq.
Non-Public Arbitrator, Panelist

Signature Date

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Non-Public Arbitrator, Panelist

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