

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

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In the Matter of the Arbitration Between:

Millani Lew and Glenn Lew, Claimants v. UBS Financial Services Inc. (f/k/a UBS PaineWebber Inc.), Respondent

Case Number: 04-08538

Hearing Site: Seattle, Washington

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Nature of the Dispute: Customers v. Member

**REPRESENTATION OF PARTIES**

For Claimants:

Steven D. Toskes, Esq.  
Klayman & Toskes, P.A.  
Boca Raton, Florida

For Respondent:

Shont E. Miller, Esq.  
Munger Tolles & Olson, LLP  
Los Angeles, California

**CASE INFORMATION**

Statement of Claim filed: December 15, 2004

Claimants Millani Lew and Glenn Lew's Joint Uniform Submission Agreement signed:  
December 4, 2004

Statement of Answer filed by Respondent UBS Financial Services Inc.: March 17, 2005

Respondent UBS Financial Services Inc.'s Uniform Submission Agreement signed: March 17,  
2005

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary and contractual duties, constructive fraud, failure to supervise and control, negligence and gross negligence, violation of federal securities laws, NASD conduct rules, and NYSE rules, and violation of the Washington Securities Act. Claimants' claims involved Respondent's alleged failure to manage risk associated with Claimants' portfolio. The portfolio was comprised largely of Microsoft shares that Claimant Millani Lew had obtained by participating in Microsoft's employee stock option plan that was administered by Respondent.

Unless specifically admitted in its Answer, Respondent UBS Financial Services Inc. denied the allegations of wrongdoing set forth in Claimants' Statement of Claim and asserted the following defenses: Claimants' claims are barred by applicable statutes of limitations, failure to state a cause of action, assumption of risk, estoppel, waiver, laches, failure to mitigate, damages alleged are not the proximate result of Respondent's conduct, Claimants did not allege a basis for recovery of taxes, attorney's fees, or lost opportunity costs, and should the panel determine that Respondent is liable to Claimants, then damages should be reduced by the amount that a portfolio consistent with Claimants' investment objective would have declined in value during this period.

#### **RELIEF REQUESTED**

Claimants requested \$1,513,594.00 in compensatory damages, unspecified punitive damages, pre- and post-judgment interest, and costs, including attorney's fees and forum fees.

Respondent requested dismissal of Claimants' Statement of Claim in its entirety, assessment of forum fees to Claimant, and costs.

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

On August 24, 2005, Respondent UBS Financial Services Inc. filed a Motion to Dismiss Claim as Time Barred and Appendix of Authorities in Support Thereof. On September 1, 2005, Claimants filed a Memorandum of Law in Opposition to Respondent's Motion to Dismiss Claim as Time Barred. On September 6, 2005, a telephonic pre-hearing conference was held during which the Panel heard oral argument from the parties regarding Respondent's motion and Claimant's opposition to the motion. After due deliberation, the Panel hereby grants Respondent's Motion to Dismiss, as Claimants' claims are barred by applicable statutes of limitation.

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, Respondents' Motion to Dismiss Claim as Time Barred and Appendix of Authorities in Support Thereof, Claimants' Memorandum of Law in Opposition to Respondent's Motion to Dismiss Claim as Time Barred, and the parties' oral arguments concerning the motion and the opposition, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimants' claims are denied in their entirety.
- 2) The parties shall bear their respective costs, including attorney's fees.

3) All other relief requested and not expressly granted is denied.

**FEES**

Pursuant to the Code, the following fees are assessed:

**Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee = \$ 500.00

**Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm UBS Financial Services Inc. is a party, and the following fees are assessed:

Member Surcharge	= \$2,800.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$5,000.00</u>
<b>Total Member Fees</b>	<b>= \$8,550.00</b>

**Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

Three (3) pre-hearing conference sessions with the Panel @ \$1,200.00/session = \$3,600.00

Pre-hearing conferences:	June 2, 2005	1 session
	July 6, 2005	1 session
	September 6, 2005	1 session

**Total Forum Fees = \$ 3,600.00**

1. The Panel assessed \$2,700.00 of the forum fees jointly and severally to Claimants Millani and Glenn Lew.
2. The Panel assessed \$900.00 of the forum fees to Respondent UBS Financial Services Inc.

**Fee Summary**

1. Claimants Millani and Glenn Lew are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 500.00
<u>Forum Fees</u>	<u>= \$ 2,700.00</u>
Total Fees	= \$ 3,200.00
<u>Less payments</u>	<u>= \$(1,700.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 1,500.00</b>

2. Respondent UBS Financial Services Inc. is charged with the following fees and costs:

Member Fees	= \$ 8,550.00
<u>Forum Fees</u>	<u>= \$ 900.00</u>
Total Fees	= \$ 9,450.00
<u>Less payments</u>	<u>= \$(4,450.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 5,000.00</b>

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

NASD Dispute Resolution  
Arbitration No. 04-08538  
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**ARBITRATION PANEL**

*Richard E. Keefe, Esq.*  
*Elwood Avery*  
*William W. Anderson*

• *Public Arbitrator, Presiding Chair*  
• *Public Arbitrator*  
• *Non-Public Arbitrator*

**Concurring Arbitrators' Signatures**

  
Richard E. Keefe, Esq.  
Chair, Public Arbitrator

9.14.05  
Signature Date

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Elwood Avery  
Public Arbitrator

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

\_\_\_\_\_  
William W. Anderson  
Non-Public Arbitrator

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

9/14/05  
Date of Service

**ARBITRATION PANEL**

***Richard E. Keefe, Esq.***  
***Elwood Avery***  
***William W. Anderson***

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***Public Arbitrator, Presiding Chair***  
***Public Arbitrator***  
***Non-Public Arbitrator***

**Concurring Arbitrators' Signatures**

Richard E. Keefe, Esq.  
Chair, Public Arbitrator

Signature Date

  
Elwood Avery  
Public Arbitrator

September 14, 2005  
Signature Date

William W. Anderson  
Non-Public Arbitrator

Signature Date

9/14/05  
Date of Service

**ARBITRATION PANEL**

<b><i>Richard E. Keefe, Esq.</i></b>	-	<b><i>Public Arbitrator, Presiding Chair</i></b>
<b><i>Elwood Avery</i></b>	-	<b><i>Public Arbitrator</i></b>
<b><i>William W. Anderson</i></b>	-	<b><i>Non-Public Arbitrator</i></b>

**Concurring Arbitrators' Signatures**

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Richard E. Keefe, Esq.  
Chair, Public Arbitrator

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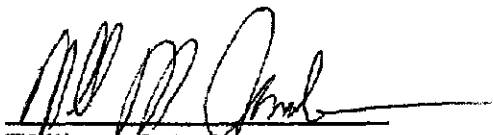
Signature Date

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Elwood Avery  
Public Arbitrator

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Signature Date



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William W. Anderson  
Non-Public Arbitrator

9-14-05

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Signature Date

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Date of Service