

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

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In the Matter of the Arbitration Between:

Susquehanna Investment Group (Claimant) vs. UBS Securities LLC (Respondent)

Case Number: 04-08653

Hearing Site: New York, New York

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Nature of the Dispute: Non-Member With Contract to Arbitrate vs. Member

**REPRESENTATION OF PARTIES**

Claimant Susquehanna Investment Group hereinafter referred to as "Claimant": Charles M. Hart, Esq., Wolff, Block, Schorr, and Solis-Cohen, LLP, Philadelphia, Pennsylvania.

Respondent UBS Securities LLC hereinafter referred to as "Respondent": Joel M. Miller, Miller & Wrubel, P.C., New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: December 23, 2004.

Amended Statement of Claim filed on or about: February 2, 2005.

Answer to the Counterclaim filed on or about: March 10, 2005.

Claimant signed the Uniform Submission Agreement: December 21, 2004.

Statement of Answer and Counterclaim filed by the Respondent on or about: February 28, 2005.

Respondent did not file a Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following cause of action: breach of contract.

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

Respondent asserted the following causes of action in its Counterclaim: disputed fee violates the AMEX and SEC rules; custom and usage; public policy, and the antitrust laws.

Unless specifically admitted in its Answer, Claimant denied the allegations made in the Counterclaim and asserted various affirmative defenses.

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$243,907.95 plus in interest, costs, and attorneys' fees. In the Amended Statement of Claim, Claimant

requested \$206,884.62 in compensatory damages. Claimant requested that Respondent's Counterclaim be dismissed.

In its Counterclaim Respondent requested declaratory judgment, injunctive relief and any other relief that the Panel may award. Respondent requested that Claimant's claims be dismissed in its entirety.

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

Respondent UBS 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 answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

At the hearing, Claimant amended its compensatory damage claim requested in the Amended Statement of Claim from \$206,884.62 to \$458,835.70 in total compensatory damages and \$27,663.10 in total interest.

Panel Discussion: The Panel wants to notify the NASD and American Stock Exchange that it was extremely reluctant to award the amount due on cancellation fees. The Panel was not persuaded by Respondent's argument that such fees are not supported by consideration, but we do take note of the testimony UBS introduced at the hearing as to the theoretical, and potential, anti-competitive nature of these cancellation fees. We do not find in the record any evidence that cancellation fees on Exchange Traded Funds (ETFs) are having in practice such an anti-competitive impact, and the Panel has neither the resource nor the expertise to develop such evidence. We also note the argument that cancellation fees by a specialist can function in the nature of access fees (though certain transactions, namely orders which expire on their terms, are not subject to either fees or specialist commissions), and might warrant further scrutiny. But the Panel does not view it as our function to second-guess or regulate the Amex, and we have seen no testimony of actual (as opposed to potential) conduct that might be shocking to our sense of fairness. We urge the Amex, in considering the evidence of the practical effect of these fees on the markets, to either explicitly permit or else limit cancellation fees.

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, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable for and shall pay to the Claimant \$458,835.70 in compensatory damages plus interest in the amount of \$27,663.10.
2. Respondent's Counterclaim is denied.

3. Any and all relief not specifically addressed herein is 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	= \$ 1,000.00
Counterclaim filing fee	= \$ 500.00

#### **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 persons at the time of the events giving rise to the dispute. Accordingly, Susquehanna Investment Group and UBS Securities LLC are parties.

#### **Susquehanna Investment Group**

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

#### **UBS Securities LLC**

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

#### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. A 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) Decisions on discovery related motions on the papers	
With one (1) arbitrator @ 200.00	= \$ 400.00
Claimant submitted one (1) discovery related motion	
Respondent submitted one (1) discovery related motion	

Seven (7) Pre-hearing conference sessions with Panel @ \$1,125.00 per session	
	= \$ 7,875.00

Pre Hearing Conferences: June 29, 2005	1 session
October 6, 2005	1 session
January 20, 2006	1 session
January 23, 2006	1 session
February 7, 2006	1 session (in-person)
March 22, 2006	1 session
May 1, 2006	1 session

Ten (10) Hearing sessions with Panel @ \$1,125.00 per session	= \$ 11,250.00
April 18, 2006	2 sessions
April 19, 2006	2 sessions
May 16, 2006	2 sessions
May 17, 2006	2 sessions
May 22, 2006	2 sessions
<b>Total Forum Fees</b>	<b>= \$19,525.00</b>

1. The Panel has assessed \$9,762.50 of the forum fees against the Claimant.
2. The Panel has assessed \$9,762.50 of the forum fees against Respondent.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 5,200.00
Forum Fees	= \$ 9,762.50
<b>Total Fees</b>	<b>= \$15,962.00</b>
<u>Less payments</u>	<u>= \$ 4,575.00</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$11,387.50</b>

2. Respondent is solely liable for:

Counterclaim Filing Fee	= \$ 500.00
Member Fees	= \$ 5,200.00
Forum Fees	= \$ 9,762.50
<b>Total Fees</b>	<b>= \$15,462.50</b>
<u>Less payments</u>	<u>= \$ 9,450.00</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 7,012.50</b>

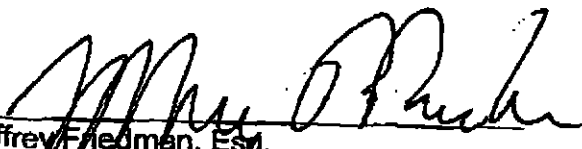
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**


Jeffrey F. Friedman, Esq.	-	Public Arbitrator, Presiding Chairperson
Richard S. Peskin, Esq.	-	Public Arbitrator
Linda S. Cole	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**


I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

  
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Jeffrey F. Friedman, Esq.  
Public Arbitrator, Presiding Chairperson

6/8/06  
Signature Date

  
\_\_\_\_\_  
Richard S. Peskin, Esq.  
Public Arbitrator

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

  
\_\_\_\_\_  
Linda S. Cole  
Public Arbitrator

6/9/06  
Signature Date

June 9, 2006

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Date of Service (For NASD Dispute Resolution use only)