

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

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In the Matter of the Arbitration Between:

Stefan J. Cherneski (Claimant) vs. UBS Financial Services Inc. and Stephen Skinner (Respondents)

Case Number: 04-08667

Hearing Site: Hartford, Connecticut

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

**REPRESENTATION OF PARTIES**

Claimant Stefan J. Cherneski hereinafter referred to as "Claimant": Richard S. Order, Esq., Axinn, Veltrop & Harkrider LLP, Hartford, CT.

Respondent UBS Financial Services Inc. hereinafter referred to as ("UBS"): Andrew W. Sidman, Esq., Bressler Amery & Ross, P.C. New York, NY.

Respondent Stephen Skinner hereinafter referred to as ("Skinner") appeared *pro-se*.

**CASE INFORMATION**

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

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

Statement of Answer filed by UBS on or about: March 10, 2005.

UBS signed the Uniform Submission Agreement: March 9, 2005.

Statement of Answer filed by Skinner on or about: June 9, 2005.

Skinner did not sign the Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: violations of federal and state securities laws, state unfair trade practices statutes, fraud breach of fiduciary duty, aiding and abetting, breach of fiduciary duty, negligence, and fraudulent misrepresentation. The causes of action relate to Spot Coffee.

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

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

### **RELIEF REQUESTED**

Claimant requested an award against Respondents as follows:

1. Compensatory damages in the minimum amount of \$280,000.00;
2. Punitive damages in the minimum amount of \$200,000 under the common law and under Connecticut General Statutes § 42-110g(a) and New York General Business Law § 349;
3. Attorney's fees under the common law and under Connecticut General Statutes § 42-110g(d) and § 36b-29(a) and (b) and New York General Business Law § 349(h);
4. Interest; and
5. Any other and further relief to which the arbitrator deems claimant is entitled.

Respondent UBS requested that the Statement of Claim be dismissed with prejudice, costs and such additional relief as the panel determines is just and proper.

Respondent Skinner requested that the Statement of Claim be dismissed in its entirety.

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

Respondent Skinner 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, is bound by the determination of the Panel on all issues submitted.

On or about November 21, 2005, Claimant informed NASD Dispute Resolution that Respondent Skinner filed Notice of Bankruptcy and submitted a copy of the Bankruptcy Petition. Therefore, the case against Skinner was stayed.

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 for and shall pay to Claimant compensatory damages in the amount of \$175,000.00, plus interest at a rate of 9% per annum from August 14, 2003 to the date of the Award.
2. Any and all relief not specifically addressed herein, including punitive damages, 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	= \$ 300.00
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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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, UBS Financial Services, Inc., is a party.

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 2,750.00</u>
Total Member fees	= \$ 5,200.00

#### **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:

One (1) Pre-hearing session with Panel @ \$1,125.00 per session	= \$ 1,125.00
Pre-hearing conference: June 7, 2005 1 session	

Seven (7) Hearing sessions @ \$1,125.00 per session	= \$ 2,250.00
Hearing Dates: November 30, 2005 2 sessions	
December 1, 2005 3 sessions	
January 12, 2006 2 sessions	

Total Forum Fees	= \$ 9,000.00
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1. The Panel has assessed \$4,500.00 of the forum fees to Claimant.
2. The Panel has assessed \$4,500.00 of the forum fees to Respondent UBS.

### **Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$ 4,500.00</u>
Total Fees	= \$ 4,800.00
<u>Less payments</u>	<u>= \$ 1,425.00</u>
Balance Due NASD Dispute Resolution	= \$ 3,375.00

2. Respondent UBS is solely liable for:

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	<u>= \$ 4,500.00</u>
Total Fees	= \$ 9,700.00

<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 4,500.00

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

ARBITRATION PANEL

Hilary B. Miller, Esq.  
Alexander Tolor, Ph.D  
C. Henry Lucas, MBA

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

Concurring Arbitrators' Signatures



Hilary B. Miller, Esq.  
Public Arbitrator, Presiding Chairperson

1/17/06  
Signature Date

Alexander Tolor, Ph.D  
Public Arbitrator

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Signature Date

C. Henry Lucas, MBA  
Non-Public Arbitrator

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Signature Date

JANUARY 23, 2006  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

Hilary B. Miller, Esq.  
Alexander Tolor, Ph.D  
C. Henry Lucas, MBA

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

**Concurring Arbitrators' Signatures**

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Hilary B. Miller, Esq.  
Public Arbitrator, Presiding Chairperson

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

Alexander Tolor, Ph.D.  
Alexander Tolor, Ph.D  
Public Arbitrator

January 17, 2006  
Signature Date

\_\_\_\_\_  
C. Henry Lucas, MBA  
Non-Public Arbitrator

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

JANUARY 23, 2006  
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**ARBITRATION PANEL**

Hilary B. Miller, Esq.  
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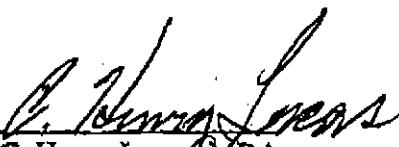
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Hilary B. Miller, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

Alexander Tolor, Ph.D  
Public Arbitrator

Signature Date

  
C. Henry Lucas, MBA  
Non-Public Arbitrator

  
Signature Date

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