

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Thomas Whalen

and

Case Number: 04-08806

Hearing Site: Oklahoma City, Oklahoma

Name of Respondent

UBS Financial Services, Inc.,
f/k/a UBS PaineWebber, Inc.

NATURE OF DISPUTE

Customer v. Member

REPRESENTATION OF PARTIES

Thomas Whalen ("**Claimant**") was represented by Charles Hunter, Esq., Woska & Hayes, LLP, Kingwood, Texas.

UBS Financial Services, Inc. ("**Respondent**" or "**UBS**") was represented by Erin M. Naftali, Esq., UBS Financial Services, Inc., Weehawken, New Jersey and Timothy J. Bomhoff, Esq., Ryan, Whaley & Coldiron, Oklahoma City, Oklahoma.

CASE INFORMATION

The Statement of Claim was filed on or about December 20, 2004. The Submission Agreement of Claimant was signed on or about October 31, 2004.

A Statement of Answer was filed by Respondent on or about February 24, 2005. The Submission Agreement of UBS was signed on or about February 22, 2005 by Erin M. Naftali, Esq.

CASE SUMMARY

Claimant asserted the following causes of action: violation of Section 20(a) of the Exchange Act; breach of fiduciary duty; breach of contract; violation of "Know Your Rule;" unsuitability; failure to supervise; violation of the NASD Rules of Fair Practice, Article III; violation of the Oklahoma Consumer Protection Act; negligence; failure to supervise; and

failure to diversify. The causes of action related to the recommendation and purchase of various unspecified securities. Claimant alleged that Respondent failed to properly diversify his investments, which resulted in substantial losses to his account.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim failed to state a claim upon which relief may be granted; any fiduciary duties Respondent had to Claimant in connection with self-directed investment accounts were properly discharged; Claimant's alleged losses were not proximately caused by any alleged misconduct of UBS or its employees; and Claimant cannot demonstrate that UBS or its agents acted with the requisite scienter.

RELIEF REQUESTED

Claimant requested an award in the amount of \$70,000.00 in compensatory damages, plus punitive damages, interest, costs and attorneys' fees and other relief the panel deemed just and proper.

Respondent requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees and other relief the panel deemed just and proper.

OTHER ISSUES CONSIDERED & DECIDED

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimant's claims, each and all, against Respondent, UBS Financial Services, Inc., are dismissed with prejudice in their entirety;
- 2) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 3) Any relief not specifically enumerated, including punitive damages and

attorneys' fees, is hereby denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee = \$ 225.00

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 person at the time of the events giving rise to the dispute. In this matter, the member firm is UBS Financial Services, Inc.

Member surcharge = \$1,100.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$1,700.00

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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 x \$750.00 = \$ 750.00

Pre-hearing conference: May 11, 2005 1 session

Eight (8) Hearing sessions x \$750.00 = \$ 6,000.00

Hearing Dates:	November 15, 2005	2 sessions
	November 16, 2005	2 sessions
	November 17, 2005	2 sessions
	November 18, 2005	2 sessions

Total Forum Fees = \$ 6,750.00

The Arbitration Panel has assessed \$3,375.00 of the forum fees to Thomas Whalen.

The Arbitration Panel has assessed \$3,375.00 of the forum fees to UBS Financial Services, Inc.

Fee Summary

Claimant, Thomas Whalen, is liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 3,375.00
Total Fees	= \$ 3,600.00
Less payments	= \$ 975.00
Balance Due NASD Dispute Resolution	= \$ 2,625.00

Respondent, UBS Financial Services, Inc., is liable for:

Member Fees	= \$ 3,550.00
Forum Fees	= \$ 3,375.00
Total Fees	= \$ 6,925.00
Less payments	= \$ 3,550.00
Balance Due NASD Dispute Resolution	= \$ 3,375.00

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

ARBITRATION PANEL

Robert D. Garrett, Esq. - Public Arbitrator, Presiding Chair
Dennis S. Boxeur, Esq. - Public Arbitrator
Steven J. Balaban - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Robert D. Garrett, Esq.
Robert D. Garrett, Esq.
Public Arbitrator, Presiding Chair

12/02/05
Signature Date

/s/ Dennis S. Boxeur, Esq.
Dennis S. Boxeur, Esq.
Public Arbitrator

12/01/05
Signature Date

/s/ Steven J. Balaban
Steven J. Balaban
Non-Public Arbitrator

12/01/05
Signature Date

12/02/05
Date of Service (For NASD office use only)

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Steven J. Balaban - Non-Public Arbitrator

Concurring Arbitrators:


Robert D. Garrett, Esq.
Public Arbitrator, Presiding Chair

Dec 2, 2005
Signature Date

Dennis S. Boxeur, Esq.
Public Arbitrator

Signature Date

Steven J. Balaban
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

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Concurring Arbitrators:

Robert D. Garrett, Esq.
Public Arbitrator, Presiding Chair

Dennis S. Boxeur
Dennis S. Boxeur, Esq.
Public Arbitrator

Steven J. Balaban
Non-Public Arbitrator

Signature Date

Dec. 1, 2005
Signature Date

Signature Date

Date of Service (For NASD office use only)

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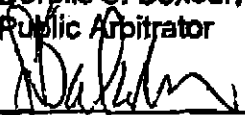
Concurring Arbitrators:

Robert D. Garrett, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Dennis S. Boxeur, Esq.
Public Arbitrator

Signature Date



Steven J. Balaban
Non-Public Arbitrator

12/1/05

Signature Date

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