

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimants
Kyle and Nancy McCard;
Kyle McCard, IRA; and,
Nancy McCard, IRA

Case Number: 05-00759

Name of the Respondents
UBS Financial Services Inc. and
Trevor Lynn Shaner

Hearing Site: Des Moines, Iowa.

NATURE OF DISPUTE

Public Customers v. Member Firm and Associated Person

REPRESENTATION OF PARTIES

Claimants Kyle and Nancy McCard; Kyle McCard, IRA; and, Nancy McCard, IRA, hereinafter collectively referred to as "Claimants": Gail E. Bolivar, Esq., of the Bolivar Law Firm, located in Marshalltown, Iowa..

Respondents UBS Financial Services Inc. ("UBS") and Trevor Lynn Shaner ("Shaner"), hereinafter collectively referred to as "Respondents": David L. Goldberg, Esq. of UBS Financial Services Inc., located in New York, New York.

CASE INFORMATION

Statement of Claim filed: February 10, 2005.

Claimants signed the Uniform Submission Agreement: February 1, 2005.

Statement of Answer filed by Respondents on: May 3, 2005.

Respondent UBS signed the Uniform Submission Agreement: April 26, 2005.

Respondent Shaner signed the Uniform Submission Agreement: May 10, 2005.

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duty; negligence; violations of the Iowa Securities Acts; violations of NASD Rules of Supervision and Suitability; misrepresentation; constructive fraud; negligent supervision and *respondeat superior*; and, breach of contract. These causes of action related to Respondents concentrating Claimants' portfolios in high-risk, sub-par mortgage loans, as well as other securities, that were unsuitable

given Claimants stated investment objectives.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses:

1. The Statement of Claim fails to state a claim upon which relief may be granted;
2. Claimants' causes of action are barred by the doctrines of ratification, waiver and estoppel, and applicable statutes of limitations;
3. Claimants cannot demonstrate that Respondents acted with *scienter*;
4. The transactions in the account were entirely consistent with Claimants' listed investment objectives, and, in light Claimants' financial condition, investment objectives, experience, portfolio and communications, Respondents had reasonable grounds to believe the securities recommendations were suitable;
5. Claimants expressly and implicitly represented to Respondents an understanding of the nature and risks of the securities purchased for in the accounts;
6. Claimants' accounts were non-discretionary and Respondents could not exercise discretion without prior agreement and instructions;
7. There is no independent cause of action for violation of NYSE or NASD rules;
8. Claimants authorized the transactions complained of and were in sole control of the assets in the account at all relevant times;
9. UBS and its officers, agents and employees acted in good faith in discharging their duties, and exercised the care, diligence and skill that prudent persons would exercise in similar circumstances and like positions;
10. UBS satisfied its obligation to supervise its employees by (i) establishing procedures and a system for applying such procedures which would reasonably be expected to prevent and detect violations and (ii) supervisory personnel have reasonably discharged the duties and obligations incumbent upon them by reason of such procedures;
11. Claimants failed to mitigate damages in an appropriate and reasonable manner;
12. Claimants' alleged losses were not proximately caused by any alleged misconduct of Respondents;
13. Claimants damages cannot be attributed to Respondents' statements, but are due instead to extraneous market conditions over which Respondents have no control;
14. Punitive damages are not available under Section 10(b);
15. Punitive damages are only available for fraudulent conduct evincing a high degree of moral turpitude and demonstrating such wanton dishonesty as to imply a criminal indifference to civil obligations. Such conduct was not pled and could not be proven.

RELIEF REQUESTED

Claimants requested:

Compensatory Damages	\$295,000.00
Interest	Unspecified
Attorneys' Fees	Pursuant to Iowa statute

Other Costs

Other Monetary/Non-Monetary Relief if any:

Pursuant to Iowa statute

As the Panel deemed fair and
equitable under these circumstances.

Respondents requested dismissal of this proceeding, and an award in their favor of the costs and disbursement of this proceeding, and all other proper relief.

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. The Statement of Claim filed by Claimants Kyle and Nancy McCard, the Kyle McCard, IRA and, the Nancy McCard, IRA is hereby dismissed and denied in its entirety;
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Trevor Lynn Shaner's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Shaner must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
3. 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;
4. Pursuant to Rule 2130, the arbitration panel has made the following affirmative findings of fact: The claim, allegation, or information is clearly erroneous;
5. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those sums specifically enumerated herein; and,
6. 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

= \$ 300.00

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. Accordingly, UBS Financial Services Inc. is a party and the following member fees are assessed:

Member surcharge

= \$ 1,700.00

Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed: None.

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:

Four (4) Hearing sessions @ \$1,125.00	= \$ 4,500.00
Hearing Dates:	December 14, 2005 2 sessions
	December 15, 2005 2 sessions
<hr/> Total Forum Fees	<hr/> = \$ 4,500.00

The Panel has assessed \$2,250.00 of the forum fees, jointly and severally, to Claimants Kyle and Nancy McCard, the Kyle McCard, IRA and, the Nancy McCard, IRA. The Panel has assessed the remaining \$2,250.00 of the forum fees, jointly and severally, to Respondents UBS Financial Services Inc. and Trevor Lynn Shaner.

SEE SUMMARY

Claimants Kyle and Nancy McCard, the Kyle McCard, IRA and, the Nancy McCard, IRA are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 2,250.00
Total Fees	= \$ 2,550.00
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 1,125.00

Respondent UBS Financial Services Inc. is solely liable for:

Member Fees	= \$ 5,200.00
Less payments	= \$ 2,450.00
Balance Due NASD Dispute Resolution	= \$ 2,750.00

Respondents UBS Financial Services Inc. and Trevor Lynn Shaner are jointly and severally liable for:

Forum Fees	= \$ 2,250.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 2,250.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule

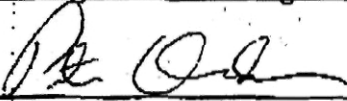
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ARBITRATION PANEL

Peter Ordower, Esq. - Public Arbitrator, Presiding Chairperson
Irving A. Chesler, J.D - Public Arbitrator
Jerome J. Brault - Non-Public Arbitrator

Concurring Arbitrators' Signatures


Peter Ordower, Esq.
Public Arbitrator, Presiding Chairperson

12/29/05
Signature Date

Irving A. Chesler, J.D
Public Arbitrator

Signature Date

Jerome J. Brault
Non-Public Arbitrator

Signature Date

12/30/05 
Date of Service (For NASD Dispute Resolution office use only)

12/30/2005 01:34 FAX
12/29/2005 10:40 FAX

Irving A Chesler
NASD

009
008/008

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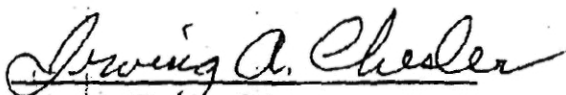
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