

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Olivia Lanfair on behalf of her IRA,
Claimant,

Case Number: 05-01662

v.

Hearing Site: St. Louis, Missouri

UBS Financial Services, Inc. and Kenneth George Neely,
Respondents.

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

REPRESENTATION OF PARTIES

Olivia Lanfair on behalf of her IRA ("Lanfair"), hereinafter referred to as "Claimant": Stuart R. Berkowitz, Esq., located in St. Louis, Missouri. Mr. Berkowitz withdrew as counsel for Claimant on November 4, 2005. On December 1, 2005, Paul N. Rechenberg, Esq. of the law firm Doster Mickes James Ullom Benson & Guest, LLC, located in Chesterfield, Missouri filed his appearance on behalf of Claimant. Mr. Rechenberg withdrew as counsel for Claimant, and Christopher Wehrle, Esq. of the law firm Goldberg Wehrle, LLC, located in St. Louis, Missouri filed his appearance on February 16, 2006.

UBS Financial Services, Inc. ("UBS") and Kenneth George Neely ("Neely"), hereinafter collectively referred to as "Respondents": Tracey Salmon-Smith, Esq. of UBS Financial Services, Inc., located in New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: March 30, 2005

Lanfair signed an undated Uniform Submission Agreement.

Lanfair's Motion for Consent to File First Amended Statement of Claim and First Amended Statement of Claim filed on or about: January 24, 2006

Statement of Answer filed by Respondent UBS on or about: October 28, 2005

UBS signed the Uniform Submission Agreement: October 11, 2005

Neely signed the Uniform Submission Agreement: April 3, 2006

Respondents' unopposed response to Lanfair's Motion for Consent to File First Amended Statement of Claim filed on: February 9, 2006

Answer to First Amended Statement of Claim filed by Respondents, UBS and Neely, on or about: March 28, 2006

Respondents' Motion in Limine filed: June 23, 2006

CASE SUMMARY

Claimant asserted the following causes of action: suitability and failure to supervise. The causes of action relate to Manulife Venture Vantage Combination Fixed and Variable Annuity and the ING Golden Select Variable Annuity. Claimant asserted that these were unsuitable recommendations, which did not meet her investment needs and objectives.

Unless specifically admitted in their Answer, Respondents UBS and Neely denied the allegations made in the Statement of Claim and asserted various affirmative defenses:

1. The Statement of Claim fails to state a claim upon which relief may be granted;
2. Claimant's causes of action are barred by the doctrines of ratification, waiver and estoppel;
3. Claimant cannot demonstrate that Respondents acted with requisite *scienter*;
4. In light of Claimant's financial condition, investment objectives, experience, portfolio composition and communications, Respondents had "reasonable grounds" to believe that any securities recommendations it made were suitable;
5. Claimant expressly and implicitly represented to Respondents her understanding of the nature and risks of the securities purchased in her accounts;
6. Respondents did not violate any fiduciary duty owed to Claimant, and was not the proximate cause of any alleged injury;
7. UBS, 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;
8. A brokerage firm satisfies its obligation to supervise its employees if (i) there are established procedures and a system for applying such procedures which is "reasonably be expected to prevent and detect" violations; and (ii) supervisory personnel have "reasonably discharged the duties and obligations incumbent upon him by reason of such procedures..." The evidence will demonstrate that UBS properly supervised the accounts;
9. Claimant had the opportunity and means to mitigate damages to the accounts, but failed to do so in an appropriate and reasonable manner; and
10. Claimant's alleged damages cannot be attributed to Respondents' statements, but are due instead to extraneous market conditions over which Respondent had no control or the actions of unnamed third parties.

RELIEF REQUESTED

Claimant requested \$100,000.01, but less than \$500,000.00 in compensatory damages, plus interest and all reasonable attorney's fees, costs, penalties and interest, and that the Panel award such other and further relief that is just and fair.

Respondents, UBS and Neely, requested dismissal of the Statement of Claim; expungement of Kenneth George Neely's CRD record; and for such other relief as the Panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

In an Order dated March 16, 2006, the Panel granted Lanfair's Motion for Consent to File First

Amended Statement of Claim.

Respondents' Motion in Limine was addressed at the commencement of hearing. Respondents' motion was deemed moot due to the stipulation of parties.

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. Respondents, UBS Financial Services, Inc. and Kenneth George Neely, are jointly and severally liable for such surrender fees as may be due and payable upon the surrender of the policies which were purchased by Claimant from Respondent. The liability of the Respondents to pay the surrendered charges are conditioned upon the Claimant surrendering her positions in full within 30 days of the date of this Judgment. In the event that Claimant elects not to surrender her positions, then in that event, there shall be no payment pursuant to this portion of the award.

The Panel finds that the recommendation to purchase a \$600,000.00 in variable annuities was not a suitable recommendation based upon the percentage that said positions would bear in relationship to the actual net worth of the Claimant. The Panel finds that the losses which resulted in the Claimant's IRA account are the result of the general market conditions which existed at the time, and any market exposed position would have likely suffered the same fate. The Panel finds that the Claimant's positions are still subject to surrender fees which would not be the case if the Claimant was positioned in other market positions. The Panel, therefore, awards the Claimant the amount which the Panel believes to represent the cost to Claimant to close out the positions, as well as a portion of the expected fees of her attorney in bringing this action.

2. Respondents, UBS Financial Services, Inc. and Kenneth George Neely, are jointly and severally liable for and shall pay to Claimant, Olivia Lanfair, the sum of \$3,500.00 as attorney's fees. In deciding to award attorney's fees, the Panel considered the pleadings filed by counsel, as well as the arguments presented on behalf of the parties, and determined that authority existed for an award of attorney's fees to the Claimant.
3. Respondents, UBS Financial Services, Inc. and Kenneth George Neely, are jointly and severally liable for and shall pay to Claimant, Olivia Lanfair, the sum of \$300.00 as reimbursement for the non-refundable NASD Dispute Resolution filing fee.
4. Except as otherwise specified herein, parties shall bear their own costs, including attorneys' fees.
5. 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

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 is assessed the following:

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:

March 28-30, 2006, adjournment by Claimant = \$ 1,125.00
(waived by the Panel)

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) Decision on discovery-related motions on the papers
with one (1) arbitrator @ \$200.00 = \$ 200.00
Claimant submitted one (1) discovery-related motion

One (1) Pre-hearing session with Panel @ \$1,125.00 = \$ 1,125.00
Pre-hearing conference: September 14, 2005 1 session

Four (4) Hearing sessions @ \$1,125.00 = \$ 4,500.00
Hearing Dates: June 27, 2006 2 sessions
June 28, 2006 2 sessions

Total Forum Fees = \$ 5,825.00

1. The Panel has assessed 100% of the total forum fees in the amount of \$5,825.00 solely to Respondent UBS Financial Services, Inc.

Fee Summary

1. Claimant, Olivia Lanfair, is solely liable for:
Initial Filing Fee = \$ 300.00
Less payments = \$ 975.00
Refund Due from NASD Dispute Resolution = \$ 675.00

2. Respondents, UBS Financial Services, Inc. is solely liable for:

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	<u>= \$ 5,825.00</u>
Total Fees	= \$11,025.00
<u>Less payments</u>	<u>= \$ 3,550.00</u>
Balance Due NASD Dispute Resolution	= \$ 7,475.00

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

ARBITRATION PANEL

Richard K. Zerr, Esq.	-	Public Arbitrator, Presiding Chairperson
David O. Kreuter	-	Public Arbitrator
Joseph P. Keaveny, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ Richard K. Zerr, Esq.
Richard K. Zerr, Esq.
Public Arbitrator, Presiding Chairperson

7/11/06
Signature Date

/s/ David O. Kreuter
David O. Kreuter
Public Arbitrator

7/11/06
Signature Date

/s/ Joseph P. Keaveny, Esq.
Joseph P. Keaveny, Esq.
Non-Public Arbitrator

7/10/06
Signature Date

7/11/06
Date of Service (For NASD Dispute Resolution use only)

NASD Dispute Resolution
Arbitration No. 05-01662
Award Page 5 of 5

2. Respondents, UBS Financial Services, Inc. is solely liable for:

Member Fees	= \$ 5,200.00
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Total Fees	= \$11,025.00
Less payments	= \$ 3,550.00
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Public Arbitrator, Presiding Chairperson

8/11/08
Signature Date

David O. Kreuter
Public Arbitrator

Signature Date

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Award Page 5 of 5

<u>Less payments</u>	= \$ 975.00
<u>Refund Due from NASD Dispute Resolution</u>	= \$ 675.00

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<u>Forum Fees</u>	= \$ 5,825.00
<u>Total Fees</u>	= \$11,025.00
<u>Less payments</u>	= \$ 3,550.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 7,475.00

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Signature Date

David O. Kreuter
Public Arbitrator

Signature Date


Joseph P. Keaveny, Esq.
Non-Public Arbitrator

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