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

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In the Matter of the Arbitration Between:

Name of the Claimant

Jose A. Rodriguez

Case Number: 05-01922

Names of the Respondents

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

Hearing Site: Orlando, Florida

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

**REPRESENTATION OF PARTIES**

Jose A. Rodriguez, hereinafter referred to as "Claimant," appeared *pro se*.

For UBS Financial Services Inc. f/k/a UBS PaineWebber, Inc. ("UBSFS") and Enrique Torruella ("Torruella"), hereinafter collectively referred to as "Respondents": Randi Perry Spallina, Esq., UBS Financial Services Inc., Fort Lauderdale, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: April 12, 2005.

Claimant signed the Uniform Submission Agreement: April 8, 2005.

Answer and Motion to Dismiss filed by Respondents UBSFS and Torruella on or about: July 8, 2005.

Respondent UBSFS signed the Uniform Submission Agreement: May 26, 2005.

Respondent Torruella signed the Uniform Submission Agreement: October 25, 2005.

"Reply to Respondents' Answer and Motion to Dismiss" filed by Claimant on or about: July 14, 2005.

"Amended Reply to Respondents' Answer and Motion to Dismiss" filed by Claimant on or about: July 19, 2005.

Renewed Motion to Dismiss filed by Respondent Torruella on or about: February 10, 2006.

Motion to Dismiss filed by Respondent Torruella on or about: March 20, 2006.

Response to Respondent Torruella's Motion to Dismiss filed by Claimant on or about: April 10, 2006.

### **CASE SUMMARY**

Claimant alleged the following causes of action: 1) unauthorized trading; and 2) fraud. The causes of action relate to the sale of Cottage Investments in Claimant's account.

Unless specifically admitted in their Statement of Answer, Respondents UBSFS and Torruella denied the allegations made in the Statement of Claim and asserted various defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$47,578.00.

Respondents UBSFS and Torruella requested: 1) that Claimant's claim be dismissed, with prejudice, in its entirety; 2) that all costs and forum fees be assessed against Claimant; and 3) that this matter be expunged from Respondents' respective records maintained by the NASD Central Registration Depository ("CRD").

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

On or about September 20, 2005, Claimant filed a notice to discontinue pursuing his claim against Respondent UBSFS. The undersigned arbitrator (the "Arbitrator") accepted Claimant's notice as a dismissal, with prejudice, of Claimant's claims against Respondent UBSFS.

On or about February 22, 2006, the Arbitrator entered an order denying Respondent Torruella's Renewed Motion to Dismiss.

Claimant did not appear at the evidentiary hearing. Upon review of the file and the record, the Arbitrator determined that Claimant received due notice of the hearing, and that arbitration of the matter would proceed without Claimant present, in accordance with the NASD Code of Arbitration Procedure (the "Code"). Respondent Torruella presented his case and thereafter moved for dismissal, with prejudice, of Claimant's claims.

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. Claimant's claims against Respondent Torruella are dismissed, with prejudice, due to lack of evidence and laches.
2. The Arbitrator recommends the expungement of all reference to the above captioned arbitration from Respondent UBSFS' and Respondent Torruella's registration records maintained by the CRD, with the understanding that pursuant to NASD Notice to Members 04-16, Respondents UBSFS and Torruella 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 Arbitrator has made the following affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous, and is false.

5. Any and all claims for relief not specifically addressed herein are denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 175.00

#### **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, Respondent UBSFS is a party and a member firm.

Member surcharge = \$ 875.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$1,000.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

March 7, 2006, adjournment by Respondents. The Arbitrator assessed an adjournment fee in the amount of \$450.00 to Claimant.

#### **Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

There were no three-day cancellation fees incurred during these proceedings.

#### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required

to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Arbitrator.

There were no injunctive relief fees assessed during these proceedings.

**Forum Fees and Assessments**

The Arbitrator has assessed forum fees for each session conducted. A session is any meeting between the parties and the Arbitrator, including a pre-hearing conference with the Arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

Four (4) Pre-hearing session with a single arbitrator @ \$450.00 per session	= \$ 1,800.00
Pre-hearing conferences:	
September 13, 2005      1 session	
January 16, 2006        1 session	
February 2, 2006       1 session	
April 17, 2006         1 session	
One (1) Hearing Session @ \$450.00 per session	= \$ 450.00
Hearing session:            April 26, 2006      1 session	
Total Forum Fees	= \$ 2,250.00

The Arbitrator assessed forum fees in the amount of \$2,250.00 to Claimant.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 175.00
Adjournment Fee	= \$ 450.00
Forum Fees	= \$ 2,250.00
Total Fees	= \$ 2,875.00
Less payments	= \$ 625.00
Balance Due NASD Dispute Resolution	= \$ 2,250.00

Respondent UBSFS is solely liable for:

Member Fees	= \$ 2,625.00
Total Fees	= \$ 2,625.00
Less payments	= \$ 2,625.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

**ARBITRATION PANEL**

*Richard W. Thornburg, JD*

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*Public Arbitrator*

**Arbitrator's Signature**

/s/

Richard W. Thornburg, JD  
Public Arbitrator

May 3, 2006

Signature Date

May 4, 2006

Date of Service (For NASD Dispute Resolution office use only)

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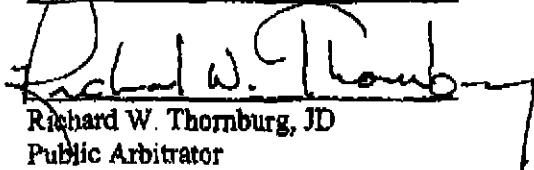
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**ARBITRATION PANEL**

*Richard W. Thornburg, JD*

*Public Arbitrator*

Arbitrator's Signature

  
Richard W. Thornburg, JD  
Public Arbitrator

05.03.06  
Signature Date

Date of Service (For NASD Dispute Resolution office use only)