

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Donald and Geraldine Van Zyl, Claimants v. UBS Financial Services Inc. and David K. Lundquist, Respondents

Case Number: 05-02465

Hearing Site: Seattle, Washington

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Nature of the Dispute: Customers v. Member and Associated Person

**REPRESENTATION OF PARTIES**

For Claimants Donald and Geraldine Van Zyl:

Randy Barnard, Esq.  
O'Shea Barnard Martin,  
P.S.  
Bellevue, Washington

For Respondents UBS Financial Services Inc. and  
David K. Lundquist:

Michael A. Nesteroff, Esq.  
Lane Powell PC  
Seattle, Washington

**CASE INFORMATION**

Statement of Claim filed: May 10, 2005

Claimants Donald and Geraldine Van Zyl's Joint Uniform Submission Agreement  
signed: May 3, 2005

Joint Statement of Answer filed by Respondents UBS Financial Services Inc. and David  
K. Lundquist: July 19, 2005

Respondent UBS Financial Services Inc.'s Uniform Submission Agreement signed:  
June 10, 2005

Respondent David K. Lundquist's Uniform Submission Agreement signed: June 30,  
2005

### **CASE SUMMARY**

Claimants asserted the following causes of action: unsuitability, breach of fiduciary duty, negligence, material misrepresentations, and violation of the Washington Consumer Protection Act. Claimants' allegations involved the purchase of shares of Stamps.com in their UBS account and in their other brokerage accounts.

Unless specifically admitted in their Answer, Respondents denied the allegations of wrongdoing set forth in Claimant's Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested \$3,512,000.00 in compensatory damages.

Respondents requested dismissal of Claimants' Statement of Claim in its entirety, expungement of this matter from NASD's Central Registration Depository ("CRD") records, assessment of forum fees to Claimants, and costs, including attorney's fees.

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

On May 1, 2006, Respondents filed a Motion to Dismiss. On May 8, 2006, Claimants filed a Response to Respondents' Motion to Dismiss. On May 12, 2006, Respondents filed a Reply Brief in Support of Motion to Dismiss. On May 15, 2006, the Panel heard oral argument from the parties regarding the motion. The Panel ruled that Respondents were not liable for any losses incurred by third parties Ariel Kane and Shya Kane in connection with their investments in Stamps.com. The Panel deferred its decision on whether Respondents could be held liable for Claimants' losses on investments that they made at Lehman Brothers Inc. until the close of the evidentiary hearing.

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, testimony, evidence presented at the hearing, Respondents' Motion to Dismiss, the other documents filed in connection with this motion, and the parties' oral arguments regarding the motion, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimants' claims are denied in their entirety.
- 2) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent David K. Lundquist's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondent David K. Lundquist must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

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.

Pursuant to Rule 2130, the arbitration panel has made the following affirmative findings of fact:

The Panel found that the greater portion of the damages alleged were for Claimants' losses stemming from trading at Lehman Brothers Inc., an NASD member firm that is not a named Respondent in this matter, and that David K. Lundquist was not involved in the alleged investment-related sales practice violations, "high pressure sales tactics," and "failure to investigate suitability (in a non-discretionary account)." The Panel further found that Claimants' allegations were false.

- 3) The parties shall bear their respective costs, including attorney's fees.
- 4) 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 received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 600.00
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### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm UBS Financial Services Inc. is a party, and the following fees are assessed:

Member Surcharge	= \$2,800.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$5,000.00
<b>Total Member Fees</b>	<b>= \$8,550.00</b>

### **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. The following forum fees are assessed:

Four (4) hearing sessions @ \$1,200.00/session	= \$4,800.00
Hearings: May 15, 2006 2 sessions	
May 16, 2006 2 sessions	
<b>Total Forum Fees</b>	<b>= \$4,800.00</b>

The Panel assessed \$4,800.00 of the forum fees jointly and severally to Claimants.

### **Fee Summary**

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 4,800.00
Total Fees	= \$ 5,400.00
Less payments	= \$(1,800.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 3,600.00</b>

2. Respondent UBS Financial Services Inc. is charged with the following fees and costs:

Member Fees	= \$ 8,550.00
Less payments	= \$(8,550.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

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

**ARBITRATION PANEL**

<b><i>Richard L. Warner</i></b>	-	<b><i>Public Arbitrator, Presiding Chair</i></b>
<b><i>Michael R. Scott</i></b>	-	<b><i>Public Arbitrator</i></b>
<b><i>Peter G. Walker</i></b>	-	<b><i>Non-Public Arbitrator</i></b>

**Concurring Arbitrators' Signatures**



**Richard L. Warner**  
**Chair, Public Arbitrator**

5/18/06  
**Signature Date**

**Michael R. Scott**  
**Public Arbitrator**

**Signature Date**

**Peter G. Walker**  
**Non-Public Arbitrator**

**Signature Date**

5/18/06  
**Date of Service**

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