

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimants

Robert H. Gengler, IRA and Margaret M. Gengler Dec of Trust

and

05-02610
Chicago, Illinois

Name of Respondent

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

Nature of the Dispute: Customers vs. Member.

REPRESENTATION OF PARTIES

Robert H. Gengler, IRA and Margaret M. Gengler Dec of Trust ("**Claimants**") were represented by Charles Hunter, Esq., Woska & Hayes, LLP, Kingwood, Texas.

UBS Financial Services Inc. f/k/a UBS PaineWebber, Inc. ("**Respondent**") was represented by Dan A. Rosenbaum, Esq., UBS Financial Services Inc., Weehawken, New Jersey.

CASE INFORMATION

The Statement of Claim was filed on or about May 17, 2005. Submission Agreement of Claimants Robert H. Gengler and Margaret M. Gengler was signed on April 4, 2005.

Statement of Answer was filed by Respondent UBS Financial Services Inc. f/k/a UBS PaineWebber, Inc. on or about July 21, 2005. Submission Agreement of Respondent UBS Financial Services Inc. f/k/a UBS PaineWebber, Inc. was signed on July 15, 2005.

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duty; breach of contract; violation of know your customer rule; unsuitability; failure to diversify; failure to supervise; violations of state and federal securities laws; various common law claims; and failure to hedge. Claimants specifically alleged, in part, as follows:

Respondents' inactivity and neglect of the Claimants' portfolio ultimately led to severe losses in the Claimants' accounts. By the time Claimants closed their

account in July of 2002, they had suffered losses of approximately \$130,000.00 as a direct result of Respondent's mismanagement of their account.

In Mr. Gengler's own words, Respondent "lied, never managed his account and promised a lower fee." Furthermore, Respondent assured Claimants that their "investment would grow and that [their] investments would outperform any other investments."

Claimants stated retirement income as their goals and objectives. Respondent recommended a portfolio composed of mutual funds as suitable investments. Respondent placed the majority of the Genglers' assets in class A shares of mutual funds, including aggressive funds primarily invested in equity securities, investments clearly unsuitable for people in Claimants' position.

One of the main reasons Claimants invested in each of the investments recommended by Respondent was that they were being "promoted" by Respondent with a strong buy recommendation.

Respondent did not explain to the Genglers the adverse tax consequences they faced as a result of the investment strategy being employed by Respondent.

As a direct result of placing the Claimants' money in unsuitable investments, Respondent failed to properly protect their client in a down market and failed to properly diversify the Claimants' investments. It is clear that this was an unsuitable investment strategy for a person in the Claimants' position.

Respondent denied the allegations set forth in the Statement of Claim. Respondent specifically stated:

Claimants are experienced investors who opened UBS accounts in the midst of a momentous stock market decline, closed their accounts eight months later, just before the market rebounded, and now blame UBS for their market-driven "losses." For years, Claimants had invested successfully in "no-load" mutual funds. In late 2001, Claimants consolidated their holdings by investing through Robert Kuhn, then a broker at the UBS branch in Oakbrook, Illinois. Claimants told Kuhn that they lived comfortably off pension income and were looking to use their investments to generate long-term growth. Based upon these stated needs and objectives, Kuhn helped Claimants diversify into several mutual funds, including balanced funds, bond funds, equity funds, and U.S. Treasury funds.

Unfortunately, in the months after Claimants made these investments, the stock market continued its long, steep decline. Like so many investors worldwide, Claimants saw their well-diversified holdings decline as a direct and proximate result

of the adverse market conditions. Rather than wait out the downturn, Claimants closed their UBS accounts after only 8 months – just before the stock market began to rebound. Had Claimants simply held onto their UBS investments, they already would have earned *profits* of approximately \$130,000 in their accounts. Instead, Claimants have elected to blame UBS for the reversals they suffered over an 8-month period, in effect seeking an “insurance policy” for their market-driven losses. Based solely on these facts, Claimants assert claims alleging: (i) breach of fiduciary duty; (ii) violations of federal and Illinois securities laws and the Illinois Consumer Fraud Act; (iii) breach of contract; (iv) violations of NASD and NYSE rules; (v) “unsuitable” recommendations (that were insufficiently “hedged” or “diversified”); and (vi) failure to supervise.

UBS bears no responsibility whatsoever for any of Claimants’ alleged losses. Claimants came to UBS for the express purpose of *growing* their money, and Kuhn helped devise a well-diversified portfolio that contained about 40% in cash and fixed-income funds. Indeed, had Claimants maintained the same equity mutual funds that they had owned prior to coming to UBS, they would have suffered far greater losses during the same time period. Moreover, Claimants pulled the plug on their long-term investments at the lowest point of the market. UBS cannot be held accountable for Claimants’ refusal to wait out a full market cycle, particularly as Claimants would have earned substantial *profits* had they done so. For those fundamental reasons, the Statement of Claim lacks any legal basis, and should be dismissed.

RELIEF REQUESTED

Claimants requested that the Arbitration Panel order Respondent to pay them damages in excess of \$138,000, including but not limited to:

- A. All direct losses in the accounts;
- B. All charges to the accounts;
- C. The lost earnings that the accounts would have earned if they had been properly invested;
- D. Pre-judgment and post-judgment interest at the maximum statutory rate on all losses sustained from the date of the transactions until the date of the award by the Arbitration Panel pursuant to Illinois law;
- E. All cost of these proceedings, including forum fees, hearing session fees and costs in bringing this action to protect Claimants’ rights and best interests;
- F. Reasonable attorney fees in bringing this action under Illinois statutory law and common law as well as under the NASD and NYSE Rules of Fair Practice. Claimants also request costs and expenses including expert witness fees, in an amount to be determined at the arbitration hearing;

- G. Punitive damages to be assessed by the Arbitration Panel to ensure the investing public that, in the future, Respondent and their financial consultants will conduct their affairs to the highest integrity required of financial advisors;
- H. All damages allowable under the Illinois Consumers Fraud Act; and
- I. That Claimant be granted all other and further relief to which they may be entitled.

Respondent requested that an appropriate award be entered (i) dismissing the Statement of Claim in its entirety; (ii) awarding UBS its costs in defending against the Statement of Claim; and (iii) granting such other and further relief as may be just and proper.

OTHER ISSUES CONSIDERED & DECIDED

Prior to the commencement of the hearing, Claimants asserted a Motion to Exclude Evidence. The Motion was denied.

At the conclusion of the presentation of evidence, Claimants asserted a Motion for Sanctions. After hearing argument on the motion, the Panel took the Motion under advisement. After considering the Motion and the arguments, the Motion is denied.

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 the NASD Dispute Resolution (the "NASD").

AWARD

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

1. Find in favor of the Respondent.
2. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees, not specifically awarded or otherwise provided for above.

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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is UBS Financial Services Inc. f/k/a UBS PaineWebber, Inc.

Member surcharge	\$	1,700.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	2,750.00
Total Member Fees	\$	5,200.00

Adjournment Fees

Adjournments requested during these proceedings:

Hearing Date(s), March 21-24, 2006, adjournment requested by Claimants = \$1,125.00
Fee waived by the Panel

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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

1 Pre-hearing session(s) with Panel	x	1,125.00	\$	1,125.00
October 17, 2005	1	session		
6 Hearing sessions	x	1,125.00	\$	6,750.00
May 9, 2006	2	sessions		
May 10, 2006	2	sessions		
May 11, 2006	2	sessions		
Total Forum Fees			\$	7,875.00

The Arbitration Panel has assessed \$3,937.50 of the forum fees to Robert H. Gengler, IRA and Margaret M. Gengler Dec of Trust.

The Arbitration Panel has assessed \$3,937.50 of the forum fees to UBS Financial Services Inc. f/k/a UBS PaineWebber, Inc.

Fee Summary

Claimants, Robert H. Gengler, IRA and Margaret M. Gengler Dec of Trust are jointly and severally liable for:

Initial Filing Fee	= \$	300.00
<u>Forum Fees</u>	= \$	3,937.50
Total Fees	= \$	4,237.50
<u>Less payments</u>	= \$	-1,425.00
Balance Due NASD Dispute Resolution	= \$	2,812.50

Respondent, UBS Financial Services Inc. f/k/a UBS PaineWebber, Inc., is liable for:

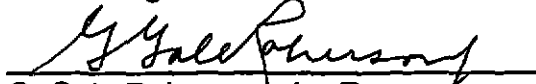
Member Fees	= \$	5,200.00
<u>Forum Fees</u>	= \$	3,937.50
Total Fees	= \$	9,137.50
<u>Less payments</u>	= \$	-5,200.00
Balance Due NASD Dispute Resolution	= \$	3,937.50

All balances are due to NASD Dispute Resolution

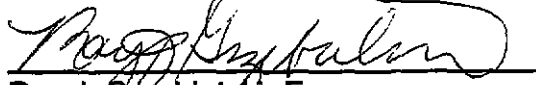
ARBITRATION PANEL

G. Gale Roberson, Jr., Esq. - Public Arbitrator, Presiding Chair
Ray J. Grzebielski, Esq. - Public Arbitrator
Martin Liebman - Non-Public Arbitrator


Concurring Arbitrators:


G. Gale Roberson, Jr., Esq.
Public Arbitrator, Presiding Chair

May 11, 2006
Signature Date


Ray J. Grzebielski, Esq.
Public Arbitrator

May 11, 2006
Signature Date


Martin Liebman
Non-Public Arbitrator

May 11, 2006
Signature Date

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5/12/06
Date of Service (For NASD office use only)