

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Names of Claimants

Mark Bostick and Tammy Mynes-Bostick

and

Case Number: 05-03099
Hearing Site: Houston, Texas

Name of Respondent

UBS Financial Services, Inc.

NATURE OF DISPUTE

Customers v. Member Firm

REPRESENTATION OF PARTIES

Mark Bostick and Tammy Mynes-Bostick ("**Claimants**") were represented by Rosalind M. Robertson, Esq., Christopher R. Fehr, Esq., and Sean Keane, Esq., Simmons Cooper LLC, East Alton, Illinois.

UBS Financial Services, Inc. ("**UBS**" or "**Respondent**") was represented Paul D. Flack, Esq., Nickens Keeton Lawless Farrell & Flack LLP, Houston, Texas.

CASE INFORMATION

The Statement of Claim was filed on or about June 15, 2005. The Submission Agreement of Claimants was signed on or about June 10, 2005.

A Statement of Answer was filed by Respondent UBS on or about September 7, 2005. The Submission Agreement of UBS was signed on or about August 29, 2005 by Lisa K. Donohue, Esq.

Respondent's Motion to Dismiss was filed on or about March 10, 2006.

Claimants' Response to Respondent's Motion to Dismiss was filed on or about March 17, 2006.

Respondent's Reply to Claimants' Response to Motion to Dismiss was filed on or about March 23, 2006.

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duty; breach of contract; violation of the Texas Securities Act; violation of the Texas Deceptive Practices-Consumer Protection Act; and negligence. The causes of action related to the recommendation and purchase of stocks, including but not limited to the following: Worldpages.com, Vignette, Applied Digital Solutions, and RSL Communications. Claimants alleged that Respondent failed to properly recommend suitable investments, which led to substantial losses in their account. Claimants also alleged that Respondent failed to supervise its brokers Bill Wade Davis and Dax McCracken.

Unless specifically admitted in its Answer, Respondent UBS denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimants failed to state facts sufficient to constitute causes of action and/or claims for relief; Claimants, by their acts or omissions, approved, authorized and ratified the acts and transactions about which they now complain; Claimants, by their conduct, have waived and are estopped from asserting any and all rights he may be have against UBS; and Claimants failed to mitigate their purported damages.

RELIEF REQUESTED

Claimants requested an award in the amount of \$160,000.00 in compensatory damages, plus \$320,000.00 in treble damages, interest, costs and attorneys' fees and other relief the Panel deemed just and proper.

Respondent requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees and other relief the Panel deemed just and proper.

OTHER ISSUES CONSIDERED & DECIDED

On or about March 3, 2006, the Panel entered an order regard to Respondent's Motion to Dismiss. The Panel deferred their ruling on the motion until the commencement of the arbitration hearing.

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 NASD Dispute Resolution ("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) Claimants' claims, each and all, are dismissed in their entirety with prejudice;
- 2) Claimants, Mark Bostick and Tammy Mynes-Bostick, are liable for and shall pay to Respondent, UBS Financial Services, Inc., the sum of \$47,493.75 in attorneys' fees;
- 3) Claimants, Mark Bostick and Tammy Mynes-Bostick, are liable for and shall pay to Respondent, UBS Financial Services, Inc., the sum of \$11,000.00 for costs;
- 4) Other than Forum Fees which are specified below, the parties shall each *bear their own costs and expenses incurred in this matter; and*
- 5) Any relief not specifically enumerated, including punitive damages, is hereby denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee	= \$ 300.00
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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. In this matter, the member firm is UBS Financial Services, Inc.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

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

Two (2) Pre-hearing sessions with Panel x \$1,125.00			= \$2,250.00
Pre-hearing conferences:	October 24, 2005	1 session	
	May 1, 2006	1 session	
Five (5) Hearing sessions x \$1,125.00			= \$5,625.00
Hearing Dates:	May 9, 2006	2 sessions	
	May 10, 2006	2 sessions	
	May 11, 2006	1 session	
<hr/> Total Forum Fees			= \$7,875.00

The Arbitration Panel has assessed \$3,375.00 of the forum fees jointly and severally to Mark Bostick and Tammy Mynes-Bostick.

The Arbitration Panel has assessed \$4,500.00 of the forum fees to UBS Financial Services, Inc.

Fee Summary

Claimants, Mark Bostick and Tammy Mynes-Bostick, are jointly and severally liable for:	
Initial Filing Fee	= \$ 300.00
Forum Fees	= \$3,375.00
Total Fees	= \$3,675.00
Less payments	= \$1,575.00
Balance Due NASD Dispute Resolution	= \$2,100.00

Respondent, UBS Financial Services, Inc., is liable for:	
Member Fees	= \$4,500.00
Forum Fees	= \$4,500.00
Total Fees	= \$9,700.00
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$4,500.00

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

ARBITRATION PANEL

Frank B. Fugate - Public Arbitrator, Presiding Chair
Michael L. Landrum - Public Arbitrator
Nathan Levy - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Frank B. Fugate
Frank B. Fugate
Public Arbitrator, Presiding Chair

05/16/06
Signature Date

/s/ Michael L. Landrum
Michael L. Landrum
Public Arbitrator

05/16/06
Signature Date

/s/ Nathan Levy
Nathan Levy
Non-Public Arbitrator

05/16/06
Signature Date

05/16/06
Date of Service (For NASD office use only)

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Michael L. Landrum - Public Arbitrator
Nathan Levy - Non-Public Arbitrator

Concurring Arbitrators:

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Frank B. Fugate
Public Arbitrator, Presiding Chair

5/16/06
Signature Date

Michael L. Landrum
Michael L. Landrum
Public Arbitrator

Signature Date

Nathan Levy
Nathan Levy
Non-Public Arbitrator

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Nathan Levy - Non-Public Arbitrator

Concurring Arbitrators:

Frank B. Fugate
Public Arbitrator, Presiding Chair



Michael L. Landrum
Public Arbitrator

Signature Date

16 May 2006
Signature Date

Nathan Levy
Non-Public Arbitrator

Signature Date

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Nathan Levy - Non-Public Arbitrator

Concurring Arbitrators:

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Public Arbitrator, Presiding Chair

Signature Date

Michael L. Landrum
Public Arbitrator

Signature Date



Nathan Levy
Non-Public Arbitrator

5/16/06

Signature Date

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