

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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Robert M. Churilla

Case Number: 06-03131

Names of the Respondents  
UBS Financial Services, Inc.  
Anthony Frigoletto

Hearing Site: Richmond, VA

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

**REPRESENTATION OF PARTIES**

Robert M. Churilla, hereinafter referred to as "Claimant", appeared pro se.

For Respondent UBS Financial Services, Inc. ("UBS"): Jon D. Kaplon, Director, Associate General Counsel, UBS, Weehawken, NJ.

For Respondent Anthony Frigoletto ("Frigoletto"): David A. Gehn, Esq., Gusrae, Kaplan, Bruno & Nusbaum PLLC, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: June 30, 2006.

Amendment to Statement of Claim filed on or about: July 10, 2006.

Claimant signed the Uniform Submission Agreement: June 26, 2006.

Respondent UBS' Motion to Dismiss the Statement of Claim and Answer to Claim filed on or about: August 23, 2006.

Respondent UBS signed the Uniform Submission Agreement: August 23, 2006.

Respondent Frigoletto's Motion to Dismiss filed on or about: August 22, 2006.

Respondent Frigoletto did not file a Statement of Answer.

Respondent Frigoletto signed the Uniform Submission Agreement: August 23, 2006.

Claimant's Response to UBS' Motion to Dismiss filed on or about: September 22, 2006.

Respondent UBS' Reply to Claimant's Response to Motion to Dismiss filed on or about: October 6, 2006.

**CASE SUMMARY**

Claimant asserted the following causes of action: negligence; violation of fiduciary duty; unauthorized trading; and, suitability. The causes of action relate to the purchase of Alliance Bernstein Select Investor Services Tech fund shares in Claimant's account.

Unless specifically admitted in its Answer, Respondent UBS denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages of \$67,000.00, punitive damages of \$10,000.00, reimbursement of the claim filing fee, attorneys' fees, and costs.

Respondent UBS requested dismissal of the Statement of Claim and that all costs be assessed to Claimant.

In his Motion to Dismiss, Respondent Frigoletto requested dismissal of the Statement of Claim, costs, expungement of all references to the above-captioned arbitration from his registration records maintained by the NASD Central Registration Depository ("CRD"), and such other and further relief as the undersigned arbitrators (the "Panel") deemed just, equitable, and proper.

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

In its Motion to Dismiss, Respondent UBS asserted the following grounds for dismissal of Claimant's Statement of Claim: 1) the claims are ineligible for arbitration pursuant to Rule 10304 of the NASD Code of Arbitration Procedure (the "Code") because they were filed more than six years after the events giving rise to the Statement of Claim; 2) Claimant's claims are time barred pursuant to the applicable statutes of limitation; and, 3) Claimant ratified the purchase of the Alliance Bernstein Select Investor Services Tech fund because, even after he learned that it had been purchased, he chose not to report it to Respondent UBS and kept it in his account for five years. In his response, Claimant argued that the statutes of limitation should be tolled on equitable grounds due to Respondent UBS' alleged dilatory conduct.

In his Motion to Dismiss, Respondent Frigoletto asserted that Claimant's claims are ineligible for arbitration pursuant to Rule 10304 of the Code because they were filed more than six years after the events giving rise to the Statement of Claim.

### **AWARD**

After considering the pleadings, the Respondents' respective Motions to Dismiss, Claimant's response, and the arguments made during the January 4, 2007 pre-hearing conference, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Both Respondents' Motions to Dismiss are granted. Claimant's Statement of Claim is dismissed, with prejudice, on statute of limitations grounds and failure to meet NASD Dispute Resolution's six year eligibility rule.

The Panel recommends the expungement of all references to the above-captioned arbitration from Respondent Frigoletto's registration records maintained by the CRD, with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Frigoletto 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.

The Panel declines to make any affirmative findings of fact pursuant to Rule 2130.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages, are 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	= \$ 225.00
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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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent UBS is a party and member firm.

Member surcharge	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,700.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were assessed during these proceedings.

#### **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:

No three-day cancellation fees were assessed 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 panel.

No injunctive relief fees were assessed during these proceedings.

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

Two (2) Pre-hearing sessions with the Panel @ \$750.00/session	= \$1,500.00
Pre-hearing conferences: November 17, 2006	1 session
January 4, 2007	1 session

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Total Forum Fees	= \$1,500.00
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1. The Panel has assessed the total forum fees of \$1,500.00 jointly and severally to Respondents.

### **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 not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during these proceedings.

### **Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 225.00
Total Fees	= \$ 225.00
Less payments	= \$ 225.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent UBS is solely liable for:

Member Fees	= \$3,550.00
Total Fees	= \$3,550.00
Less payments	= \$3,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents UBS and Frigoletto are jointly and severally liable for:

Forum Fees	= \$1,500.00
Total Fees	= \$1,500.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$1,500.00

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

**ARBITRATION PANEL**

Robert Charkovsky, Esq.  
Janice L. Burnham, Esq.  
C. Gregory Ellison

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator
- Non-Public Arbitrator

### Concurring Arbitrators' Signatures

/s/  
Robert Charkovsky, Esq.  
Public Arbitrator, Presiding Chairperson

Signature      Date

/s/  
Janice L. Burnham, Esq.  
Public Arbitrator

Signature Date

/s/  
C. Gregory Ellison  
Non-Public Arbitrator

**Signature Date**

January 25, 2007

Date of Service (For NASD Dispute Resolution use only)


JAN 25 2007


**ARBITRATION PANEL**

Robert Charkovsky, Esq.  
Janice L. Burnham, Esq.  
C. Gregory Ellison

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator
- Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Robert Charkovsky, Esq.  
Public Arbitrator, Presiding Chairperson

 20, 2007  
Signature Date

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Janice L. Burnham, Esq.  
Public Arbitrator

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Signature Date

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C. Gregory Ellison  
Non-Public Arbitrator

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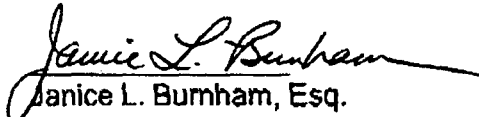
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Janice L. Burnham, Esq.  
Public Arbitrator

1/18/07  
Signature Date

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C. Gregory Ellison  
Non-Public Arbitrator

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C. Gregory Ellison  
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