

**Award**  
**FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Pasquale W. Croce, Jr. and Diane Croce (Claimants) vs. UBS Financial Services, Inc.  
(Respondent)

Case Number: 10-00361

Hearing Site: Philadelphia, Pennsylvania

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Nature of the Dispute: Customers vs. Member.

Public Arbitrator Pilot Program/All Public Panel

**REPRESENTATION OF PARTIES**

Claimants Pasquale W. Croce, Jr. ("P. Croce") and Diane Croce ("D. Croce"), hereinafter collectively referred to as "Claimants": Kevin Galbraith, Esq., Zamansky & Associates, LLC, New York, NY.

Respondent UBS Financial Services, Inc., hereinafter referred to as "Respondent": Andrew W. Sidman, Esq., Bressler, Amery & Ross, PC, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: January 25, 2010.

Amended Statement of Claim filed on or about: March 19, 2010.

P. Croce signed the Submission Agreement: January 19, 2010.

D. Croce signed the Submission Agreement: January 19, 2010.

Statement of Answer to the Amended Statement of Claim filed by Respondent on or about: June 18, 2010.

Respondent signed the Submission Agreement: June 15, 2010.

**CASE SUMMARY**

Claimants asserted the following causes of action in the Statement of Claim and Amended Statement of Claim: securities fraud, common law fraud, misrepresentation, material omission, unsuitability, breach of fiduciary duty, failure to disclose a material conflict of interest, breach of contract, negligence, failure to supervise, violation of federal securities laws, Pennsylvania securities laws (including Title 70 Pennsylvania Statutes §1-501(a)), Pennsylvania common law, and FINRA Rules. The causes of action relate to a structured derivative issued by Lehman Brothers called a 100% Principal Protected Note (100% PNN).

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

### **RELIEF REQUESTED**

In the Statement of Claim and Amended Statement of Claim, Claimants requested rescission of the purchase of the 100% PPN in their joint account, compensatory damages in the amount of approximately \$2,000,000.00, recovery of pre- and post-award interest, costs, expenses, attorneys' fees, experts' fees, forum fees, and punitive damages in such amount as the Panel deems appropriate to punish and deter Respondent from any future similar conduct.

Respondent requested that the Amended Statement of Claim be dismissed in its entirety and that it be awarded attorneys' fees and costs.

At the close of the hearing, Claimants withdrew their request for punitive damages and Respondent withdrew its request for attorneys' fees.

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

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

This case proceeded under the Public Arbitrator Pilot Program, which allows parties to choose whether to have a non-public arbitrator on the Panel.

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.

### **AWARD**

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

1. Respondent is liable for compensatory damages in the amount of \$2,000,000.00 less the residuary value of the investment which is \$480,000.00. Therefore, Respondent shall pay to Claimants compensatory damages in the amount of \$1,520,000.00 plus interest at a rate of 6% per annum from September 15, 2008 to May 27, 2011.
2. Any and all relief not specifically addressed herein, including punitive damages, is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

FINRA Dispute Resolution assessed a filing fee\* for each claim:

Initial claim filing fee

= \$1,800.00

**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 persons at the time of the events giving rise to the dispute. Accordingly, as a party, UBS Financial Services, Inc., is assessed the following:

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00

**Hearing Session Fees and Assessments**

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

One (1) Pre-hearing session with a single arbitrator @ \$450.00/session = \$ 450.00  
Pre-hearing conference: February 25, 2011 1 session

Three (3) Pre-hearing sessions with Panel @ \$1,200.00/session = \$ 3,600.00  
Pre-hearing conferences: July 1, 2010 1 session  
March 25, 2011 1 session  
April 25, 2011 1 session

Sixteen (16) Hearing sessions with Panel @ \$1,200.00/session = \$19,200.00  
Hearing Dates: May 16, 2011 2 sessions  
May 17, 2011 2 sessions  
May 18, 2011 2 sessions  
May 19, 2011 2 sessions  
May 20, 2011 2 sessions  
May 23, 2011 2 sessions  
May 24, 2011 2 sessions  
May 25, 2011 2 sessions

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**Total Hearing Session Fees = \$23,250.00**

1. The Panel has assessed \$11,625.00 of the hearing session fees jointly and severally to Claimants.
2. The Panel has assessed \$11,625.00 of the hearing session fees to Respondent.

All balances are payable to FINRA Dispute Resolution and are due upon receipt.

**ARBITRATION PANEL**

Eugene M. Schloss, Jr. - Public Arbitrator, Presiding Chairperson  
Richard F. Bleker, Ph.D. - Public Arbitrator  
James W. Geiger - Public Arbitrator

**Concurring Arbitrators' Signatures**



Eugene M. Schloss, Jr.  
Public Arbitrator, Presiding Chairperson

6/7/11  
Signature Date

Richard F. Bleker, Ph.D.  
Public Arbitrator

                      
Signature Date

**Dissenting Arbitrator's Signature**

James W. Geiger  
Public Arbitrator

                      
Signature Date

June 9, 2011

**Date of Service (For FINRA Dispute Resolution use only)**

**ARBITRATION PANEL**

Eugene M. Schloss, Jr. - Public Arbitrator, Presiding Chairperson  
Richard F. Bleker, Ph.D - Public Arbitrator  
James W. Geiger - Public Arbitrator

**Consenting Arbitrators' Signatures**

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Public Arbitrator, Presiding Chairperson

\_\_\_\_\_  
Signature Date

  
Richard F. Bleker, Ph.D  
Public Arbitrator

  
\_\_\_\_\_  
Signature Date

**Dissenting Arbitrator's Signature**

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James W. Geiger  
Public Arbitrator

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Signature Date

June 9, 2011

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FINRA Dispute Resolution  
Arbitration No. 10-00351  
Award Page 4 of 4

**ARBITRATION PANEL**

Eugene M. Schloss, Jr. - Public Arbitrator, Presiding Chairperson  
Richard F. Bieker, Ph.D - Public Arbitrator  
James W. Geiger - Public Arbitrator

**Concurring Arbitrators' Signatures**

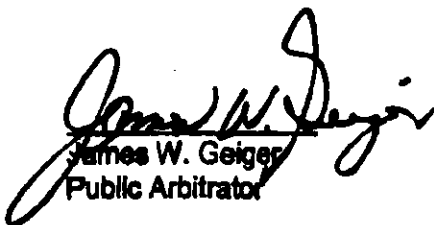
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Public Arbitrator

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