

**Award  
FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant  
Patricia M. Flanagan

Case Number: 08-04152

Name of the Respondent  
UBS Financial Services Inc.

Hearing Site: Columbia, South Carolina

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

For Patricia M. Flanagan, hereinafter referred to as "Claimant": Jacob H. Zamansky, Esq., Zamansky & Associates, LLC, New York, New York.

For UBS Financial Services Inc., hereinafter referred to as "Respondent": Richard L. Martens, Esq., Casey, Ciklin, Lubitz, Martens & O'Connell, West Palm Beach, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: November 10, 2008.

Claimant signed the Submission Agreement: November 2, 2008.

Statement of Answer filed by Respondent on or about: January 16, 2009.

Respondent signed the Submission Agreement: December 1, 2008.

**CASE SUMMARY**

Claimant asserted the following causes of action: 1) securities fraud; 2) common law fraud; 3) misrepresentation; 4) unsuitability; 5) breach of fiduciary duty; 6) breach of contract ; 7) negligence; and, 8) failure to supervise in violation of Federal Securities laws, FINRA rules and the South Carolina State Securities Laws, S.C. Code §35-1-509, *et seq.* The causes of action relate to the purchase of various Lehman Brothers issued "Principal Protected Notes" and "Return Optimization Notes" in Claimant's account.

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

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested rescission and/or compensatory damages in the amount of \$300,000.00, pre and post-award interest, costs, expenses, attorneys' fees, expert witness fees, FINRA fees and punitive damages.

In the Statement of Answer, Respondent requested that the Panel dismiss Claimant's claim in its entirety and an assessment of costs to Claimant.

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

The Panel acknowledges that they have each read the pleadings and other materials filed by the parties.

On or about November 10, 2009, Claimant filed a notification with FINRA Dispute Resolution that she intends to opt out of the class action entitled *In re: Lehman Brothers Securities and ERISA Litigation*, Docket No. 09-MD-2017 (LAK).

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:

Respondent is found liable and shall pay to Claimant compensatory damages in the amount of \$150,000.00, plus interest per annum at the state of South Carolina statutory rate of 8.75% from September 15, 2008 until November 16, 2009.

Respondent is found liable and shall pay to Claimant attorney's fees pursuant to the S. C. Uniform Securities Act of 2005, Section 35-1-509 (c)(1) in an amount to be determined by a court of competent jurisdiction.

Respondent is found liable and shall pay to Claimant costs in the amount of \$35,000.00.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages, are denied.

### **FEES**

Pursuant to the Code of Arbitration Procedure (the "Code"), the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee = \$1,425.00

*\*The filing fee is made up of a non-refundable and a refundable portion.*

#### **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 is a party and a member firm.

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



**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 lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00/session = \$ 900.00  
Pre-hearing conferences: June 25, 2009 1 session  
September 14, 2009 1 session

Two (2) Pre-hearing sessions with the Panel @ \$1,125.00/session = \$2,250.00  
Pre-hearing conference: March 25, 2009 1 session  
August 5, 2009 1 session

Eight (8) Hearing sessions @ \$1,125.00/session = \$8,000.00  
Hearing Dates: November 16, 2009 2 sessions  
November 17, 2009 2 sessions  
November 18, 2009 2 sessions  
November 19, 2009 2 sessions

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Total Hearing Session Fees = \$12,150.00

The Panel has assessed \$6,075.00 of the hearing session fees to Claimant.


The Panel has assessed \$6,075.00 of the hearing session fees to Respondent.

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

**ARBITRATION PANEL**

*Patricia Ann Tracey* - Public Arbitrator, Presiding Chairperson  
*John G. Shamp* - Public Arbitrator  
*Thomas Lee Eubanks* - Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Patricia Ann Tracey  
Public Arbitrator, Presiding Chairperson

11/20/09  
Signature Date

\_\_\_\_\_  
John G. Shamp  
Public Arbitrator

\_\_\_\_\_  
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Date of Service (For FINRA Dispute Resolution use only)

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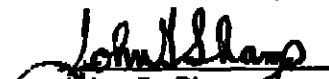
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