

## DECISION

**In the Matter of the Arbitration Between:**

**Sheryl Draker,  
Claimant**

**Hearing Site: Houston, Texas**

**and**

**U.S. Trust Company, N.A.,  
Respondent**

### REPRESENTATION OF PARTIES

Sheryl Draker ("Claimant") was represented by Debra Brewer Hayes, Woska & Hayes, L.L.P., of Houston, Texas.

U.S. Trust Company, N.A. ("U.S. Trust") was represented by Jeffrey R. Elkin, Porter & Hedges, L.L.P., of Houston, Texas.

### CASE INFORMATION

Plaintiff's Original Petition was filed in Travis County, Texas on or about May 30, 2003.

U.S. Trust filed a Motion to Transfer Venue and a General Denial on or about July 7, 2003.

The parties agreed to resolve the dispute pursuant to a confidential alternative dispute resolution process on or about November 18, 2003.

### CASE SUMMARY

Claimant asserted the following causes of action: 1) violation of Section 10(b) and Rule 10b-5; 2) violation of Section 20(a); 3) breach of fiduciary duty; 4) violation of the Texas Deceptive Trade Practices - Consumer Protection Act; 5) unsuitability; 6) failure to supervise; 7) negligence; 8) fraud and misrepresentation; 9) violation of the Texas Securities Act; 10) failure to hedge; and 11) unauthorized trading. The causes of action relate to U.S. Trust's investment management and administration of Claimant's portfolio. Claimant sought actual damages, treble damages, pre-judgment interest, costs, and attorneys' fees.

U.S. Trust denied the allegations made in the Petition, and denied any liability to Claimant. U.S. Trust further contended that Claimant ratified the transactions in her portfolio, shared responsibility for any damages Claimant sought to recover, and failed to mitigate damages,

if any. U.S. Trust also opposed Claimant's request for attorneys' fees and costs because the parties' agreement expressly stated that "Draker and U.S. Trust further agree that the fees of the Arbitrators shall be borne equally between the parties. It is further agreed that all other costs, expenses, and fees incurred in connection with the arbitration shall be borne by the party incurring same."

**RELIEF REQUESTED**

**Claimant requested:**

Damages-Failure to Encumber Tax Liability	\$76,444.00
Interest on Encumbered Funds	<u>16,071.00</u>
	\$92,515.00
Remaining Market Loss: \$ 184,544	
<u>- 76,444</u>	
\$108,100	<u>\$108,100.00</u>
	\$200,615.00
Total Actual Trebled Damages:(x 3)	\$601,845.00
Interest at 6%	\$ 12,037.00
Attorney fees at 45%	\$270,830.25
Litigation Expenses	<u>\$ 19,127.86</u>
Total Damages	\$903,839.86
Punitive Damages to be determined by the Panel:	\$ _____

**HEARING DATES**

Hearings were conducted on February 17, February 18, February 19 and February 20, 2004.

The parties have agreed that the Decision in this matter may be executed in counterpart copies or that a handwritten, signed Decision may be entered. In either case, the parties have agreed to receive conformed copies of the Decision.

**DECISION**

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

\_\_\_\_\_ U.S. Trust Company, N.A. \_\_\_\_\_ shall

pay to: Sheryl Draker

1. Compensatory damages: NINETY FIVE THOUSAND (\$95,000./00) DOLLARS;
2. Attorneys' fees: FORTY THOUSAND (\$40,000.00) DOLLARS;
3. Interest at the rate of Six (6%) Percent per annum. Interest begins to accrue on April 10, 2002 and will cease to accrue when paid;
4. Costs in the amount of: NINETEEN THOUSAND (\$19,000.00) DOLLARS;

**FEES**

**Forum Fees and Assessments**

As per the parties' agreement, the Panel assesses fees for each hearing session conducted. A hearing session is any meeting between the parties and the panel members, including a pre-hearing conference with the panel members, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session with Chairperson			\$450.00
Pre-Hearing conference:	February 16, 2004	1 session	
Seven (7) hearing sessions at \$1,350.00			\$9,450.00
Hearing dates:	February 17, 2004	2 sessions	
	February 18, 2004	2 sessions	
	February 19, 2004	2 sessions	
	February 20, 2004	1 session	
Total Forum Fees			\$9,900.00

Pursuant to the parties' agreement, the Panel has assessed \$4,950.00 of the fees to Claimant.

Pursuant to the parties' agreement, the Panel has assessed \$4,950.00 of the fees to U.S. Trust.

**ALL RELIEF NOT HEREIN GRANTED IS DENIED.**

**PANEL**

Jerry C. Prestridge, Esq. - Presiding Chair  
Allan J. Fedor, Esq.  
Peter Sterling

Jerry C. Prestridge  
Jerry C. Prestridge, Esq.  
Presiding Chair

April 5, 2004  
Signature Date

Allan J. Fedor  
Allan J. Fedor, Esq. See Addendum

April 16, 2003  
Signature Date

Peter Sterling  
Peter Sterling

April 6, 2004  
Signature Date