

AWARD
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Glenn Berkley

and

00-03664
Scottsdale, Arizona

Name of Respondent

UBS PaineWebber, Inc.

REPRESENTATION OF PARTIES

Glenn Berkley ("**Claimant**") was represented by John A. Agostini, Esq., Cain Hibbard Myers & Cook, PC, Pittsfield, Massachusetts and Daniel R. Solin, Esq., Pittsfield, Massachusetts.

UBS PaineWebber, Inc. ("**Respondent**") was represented by Michael S. Kun, Esq. and Mindy Novick, Esq., Jackson Lewis Schnitzler & Krupman, Los Angeles, California.

CASE INFORMATION

The Statement of Claim was filed on or about August 22, 2000. Berkley's Answer to Counterclaim of PaineWebber, Inc. was filed on or about January 9, 2001. Submission Agreement of Claimant Glenn Berkley was signed on August 21, 2000.

PaineWebber, Incorporated's Statement of Answer and Counterclaim was filed on or about December 28, 2000. Submission Agreement of Respondent UBS PaineWebber, Inc. was signed on January 21, 2001.

CASE SUMMARY

Claimant submitted the following summary:

Berkley had been employed by Merrill Lynch, a competing broker/dealer, as a licensed stockbroker, for approximately 12 years. He managed approximately \$100,000,000 in assets.

In March 1999, Berkley was offered a position with PaineWebber as a Senior Vice-President, working out of the Scottsdale office. At the beginning of his employment with PaineWebber, Berkley managed over \$20,000,000 in assets. He was not able to bring over to PaineWebber approximately \$80,000,000 of his assets due to some actions taken by Merrill Lynch, which were the subject of an arbitration between Merrill Lynch and Berkley that was

resolved. While Berkley was employed by PaineWebber, Gregory Glenn ("Glenn") was his immediate supervisor.

In August of 1999, Berkley was one of the top ten producers among the financial consultants at PaineWebber's Scottsdale office. On August 24, 1999, he received an invitation from Glenn to attend and be honored at a "Top Ten" dinner. As of December 31, 1999, Berkley managed assets totaling \$25,659,947. These assets generated revenues to PaineWebber in the amount of \$246,534 a year for 1999. In 2000, Berkley's annualized revenues through June 2000 were approximately \$400,000. Glenn forwarded congratulations to Berkley for being in the top ten of the 1999 "Top Ten Non-Prop Mutual Fund" financial advisors and for being in the top five of managed accounts. On April 19, 2000, Berkley was the second highest producer for the day.

Despite these achievements by Berkley, Glenn belittled his achievements and engaged in mean-spirited and harassing conduct toward Berkley. This conduct consisted of belittling his claims against Merrill Lynch, putting pressure on him to drop his claims against Merrill Lynch, stating that he would "run naked down Scottsdale Road" if Berkley was successful in obtaining a meaningful award against Merrill Lynch, referring to Berkley as "bad stock" which should be "sold", advising him that there were "bullets flying around the office" and that "one might hit you" if he was not successful in bringing in more assets, removing check writing privileges from his PaineWebber accounts, moving him to a smaller office, breaching his agreement to give him a full time assistant, and additional petty, demeaning, abusive and inappropriate conduct.

On June 30, 2000, Glenn prepared, and gave to Berkley, a "Business Plan". The Business Plan states that Berkley must have:

"Net new assets of \$2.5 million by August 31, 2000, net new assets of \$7.5 million by October 31, 2000 and net new assets of \$12 million by December 31, 2000. In addition to increasing the level of net new assets under management, Berkley was also to open six new brokerage accounts every month for the remainder of the year."

Glenn advised Berkley that he would be discharged if he failed to meet these goals. No other brokers at PaineWebber's Scottsdale office were required to meet such goals or were threatened with termination if they failed to do so.

On July 3, 2000, counsel for Berkley, Daniel R. Solin ("Solon"), advised PaineWebber that Berkley was suffering from a disability covered by the Americans with Disabilities Act ("ADA") and that Berkley suffered from major depression, which had worsened since June, 2000, due in part to the harassing and mean-spirited conduct of Glenn. Solin advised PaineWebber that Berkley had been under treatment by a psychiatrist and a psychiatric social

worker and offered to provide the relevant medical records.

Solin requested that Berkley be given reasonable accommodations, as required by the ADA, in order to permit him to adequately perform his job. On July 10, 2000, PaineWebber suspended Berkley from his job for three weeks, while it examined Berkley's medical records and had him evaluated by an independent psychiatrist, Eric Plakun, M.D., who was jointly selected and agreed upon by Berkley's counsel and by counsel for PaineWebber. Dr. Plakun, who will testify at the hearings, determined that Berkley was capable of performing the duties of his job, with some accommodations. Dr. Plakun's report is annexed hereto as Exhibit "A". Dr. Plakun is one of the most eminent forensic psychiatrists in the country.

Upon receipt of Dr. Plakun's report, counsel for PaineWebber instructed Dr. Plakun not to give it to counsel for Berkley. PaineWebber (in a letter from its in-house counsel) stated that "they would not engage in endless discussions regarding accommodations. As Berkley has now returned to work, he will be held to the performance requirements contained in the June 30, 2000 Business Plan. If he fails to meet these requirements within the specified time frame, his employment will be terminated. *These conditions are not subject to further discussion, mediation or negotiation*". (Italics supplied).

On July 31, 2000, Glenn submitted a revised Business Plan to Berkley. This was the same as the prior Business Plan of June 30th, except the deadlines for meeting new asset goals were extended by one month.

Two days later, on August 2, 2000 without any discussion of any kind with Berkley or with his counsel concerning the accommodations recommended by Dr. Plakun, PaineWebber reneged on even this limited commitment. Berkley was summarily discharged. PaineWebber kept all of his business, which it distributed to other brokers.

Despite extraordinary efforts to mitigate his damages, including accepting a position temporarily with Federal Express for a fraction of his income at PaineWebber, Berkley remains unemployed. His depression has worsened significantly, and his prospects for future employment at a compensation level commensurate with what he was earning at PaineWebber are dim.

Respondent denied the allegations of wrongdoing set forth in the Statement of Claim. Specifically, Respondent denied that Claimant had any disability as defined by the Americans with Disabilities Act. Respondent also stated that Claimant's performance as a Senior Vice President Investments was unsatisfactory, he simply did not meet the expectations of the position. It was also stated that Claimant, despite being offered assistance, continued to perform at an unacceptable level and was therefore terminated.

In its Counterclaim, respondent alleged that Claimant had signed a Promissory Note upon his hiring which had an unpaid balance remaining as a result of Claimant's termination.

RELIEF REQUESTED

Claimant requested:

- An award of compensatory damages in an amount that would be fair and just and would compensate him for his pecuniary losses;
- An award for emotional distress damages;
- An award for punitive damages;
- An award for attorneys fees; and
- An award for arbitration fees.

At the hearing, Claimant requested an award of compensatory damages in excess of \$5,000,000.00.

Respondent requested judgment as follows:

- That Claimant take nothing under his Statement of claim;
- That the Statement of Claim be dismissed in its entirety with prejudice;
- That Claimant be denied each and every demand and prayer for relief contained in his Statement of claim;
- That it be awarded money damages in the amount of \$439,386.40, plus interest thereon from August 16, 2000; for costs of suit incurred herein;
- For reasonable attorneys' fees; and
- For such other and further relief as the Arbitrators deem just and proper.

OTHER ISSUES CONSIDERED & DECIDED

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 the NASD Dispute Resolution, Inc. (the "NASD").

AWARD

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

1. Respondent PaineWebber, Inc. shall be and hereby is liable for and shall pay to Claimant Glenn Berkley the sum of \$250,000.00 (**Two Hundred Fifty Thousand Dollars**) as compensatory damages.
2. Respondent PaineWebber, Inc. shall be and hereby is liable for and shall pay to Claimant Glenn Berkley the sum of \$300,000.00 (**Three Hundred Thousand Dollars**) as punitive damages. In making this award of punitive damages, the undersigned arbitrators find that they have the authority to award punitive damages
3. The counterclaim asserted in this matter shall be and hereby is denied in its entirety.
4. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
5. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 250.00
Counter claim filing fee	= \$1,000.00

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. In this matter, the member firm is UBS PaineWebber, Inc.

Member surcharge	= \$1,200.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

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

One (1) Pre-hearing session(s) with Panel x \$1,200.00	= \$1,200.00
Pre-hearing conference(s): February 14, 2001 1 session	
Six (6) Hearing sessions x \$1,200.00	= \$7,200.00
Hearing Date(s): September 19, 2001 2 sessions	
September 20, 2001 2 sessions	
September 21, 2001 2 sessions	
Total Forum Fees	= \$8,400.00

The Arbitration Panel has assessed \$4,200.00 of the forum fees to Glenn Berkley.
The Arbitration Panel has assessed \$4,200.00 of the forum fees to UBS PaineWebber, Inc.

Fee Summary

Claimant, Glenn Berkley, shall be and hereby is liable for:

Initial Filing Fee	= \$ 250.00
<u>Forum Fees</u>	= \$4,200.00
Total Fees	= \$4,450.00
<u>Less payments</u>	= \$1,570.00
Balance Due NASD Dispute Resolution, Inc.	= \$2,880.00

Respondent, UBS PaineWebber, Inc., shall be and hereby is liable for:

Counterclaim Filing Fee	= \$1,000.00
Member Fees	= \$4,300.00
<u>Forum Fees</u>	= \$4,200.00
Total Fees	= \$9,500.00
<u>Less payments</u>	= \$5,925.00
Balance Due NASD Dispute Resolution, Inc.	= \$3,575.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Pamela M. Katzenberg, Esq. – Public Arbitrator, Presiding Chair
John L. Worcester - Public Arbitrator
Robert S. McConnell, Esq. - Public Arbitrator

Concurring Arbitrators:

/s/ Pamela M. Katzenberg
Pamela M. Katzenberg, Esq.
Public Arbitrator, Presiding Chair

October 4, 2001
Signature Date

/s/ John L. Worcester
John L. Worcester
Public Arbitrator

October 5, 2001
Signature Date

/s/ Robert S. McConnell
Robert S. McConnell, Esq.
Public Arbitrator


October 4, 2001
Signature Date

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ARBITRATION PANEL

Pamela M. Katzenberg, Esq. - Public Arbitrator, Presiding Chair
John L. Worcester - Public Arbitrator
Robert S. McConnell, Esq. - Public Arbitrator

Concurring Arbitrators:


Pamela M. Katzenberg, Esq.
Public Arbitrator, Presiding Chair


Signature Date

John L. Worcester
Public Arbitrator

Signature Date

Robert S. McConnell, Esq.
Public Arbitrator

Signature Date

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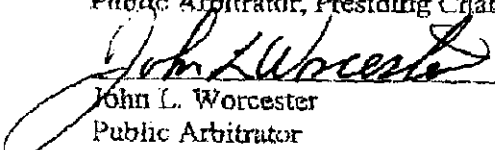
ARBITRATION PANEL

Pamela M. Katzenberg, Esq. - Public Arbitrator, Presiding Chair
John L. Worcester - Public Arbitrator
Robert S. McConnell, Esq. - Public Arbitrator

Concurring Arbitrators:

Pamela M. Katzenberg, Esq.
Public Arbitrator, Presiding Chair

Signature Date


John L. Worcester
Public Arbitrator

10/5/2001
Signature Date

Robert S. McConnell, Esq.
Public Arbitrator

Signature Date

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NASD REGULATION

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ARBITRATION PANEL

Pamela M. Katzenberg, Esq. - Public Arbitrator, Presiding Chair
John L. Worcester - Public Arbitrator
Robert S. McConnell, Esq. - Public Arbitrator


Concurring Arbitrators:

Pamela M. Katzenberg, Esq.
Public Arbitrator, Presiding Chair

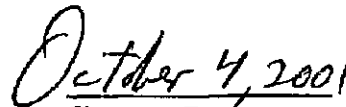
Signature Date

John L. Worcester
Public Arbitrator

Signature Date



Robert S. McConnell, Esq.
Public Arbitrator



Signature Date