
Award
NASD

In the Matter of the Arbitration Between:

Name of the Claimant
UBS PaineWebber, Inc.

Case Number: 01-02765

Names of the Respondents
Joey S. Stone and Dean Witter Reynolds Inc. d/b/a Morgan Stanley DW, Inc.

Hearing Site: New Orleans, LA

REPRESENTATION OF PARTIES

For UBS PaineWebber, Inc., hereinafter referred to as "Claimant": L. Andrew Brehm, Esq., Schuyler, Roche & Zwirner, Chicago, IL, and George Freeman, Esq., Stone, Pigman, Walther, Wittman & Hutchinson, L.L.P., New Orleans, LA.

For Respondent Joey S. Stone ("Stone"): L. Jerome Stanley, Esq., New Orleans, LA.

For Respondent Dean Witter Reynolds Inc. d/b/a Morgan Stanley DW, Inc. ("DW"): Andrew Smith, First Vice President, Assistant General Counsel, Law Division, Morgan Stanley DW, Inc., New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: May 25, 2001.

Claimant signed the Uniform Submission Agreement: May 24, 2001.

Statement of Answer and Counterclaim filed by Respondent Stone on or about: July 18, 2001.

Respondent DW did not file a Statement of Answer.

Respondent DW signed the Uniform Submission Agreement: May 31, 2001.

Respondent Stone signed the Uniform Submission Agreement: June 4, 2001.

Claimant filed an Answer to Respondent Stone's Counterclaim on or about: September 28, 2001.

Claimant filed a Petition for an Immediate Injunctive Order on or about: May 25, 2001.

Respondent Stone filed a Memorandum in Opposition to Claimant's Petition for an Immediate Injunctive Order on or about: May 31, 2001.

Respondent DW filed a Motion to Dismiss on or about: January 7, 2002.

Claimant filed a Motion for Leave to File an Amended Statement of Claim and a Response to Respondent DW's Motion to Dismiss on or about: February 18, 2002.

Respondent Stone filed a Motion for Leave to File an Amended Counterclaim on or about: March 12, 2002.

Claimant filed an Objection to Respondent Stone's Motion for Leave to File an Amended Counterclaim on or about: March 26, 2002.

Respondent Stone filed a Reply to Claimant's Objection to Respondent Stone's Motion for Leave to File an Amended Counterclaim on or about: April 1, 2002.

CASE SUMMARY

Claimant sought to recover the unforgiven principal amount due on an employee forgivable loan note signed by Respondent Stone in connection with his employment with Claimant.

Respondent Stone denied that he was indebted to Claimant with respect to the note, and asserted the following counterclaims: defamatory statements on his Form U-5; wrongful termination; and oral defamatory statements.

Claimant denied the material allegations stated in Respondent Stone's Counterclaim, and asserted the following defenses: (1) Stone was an "at will" employee whose employment could be terminated for any reason; (2) Stone had no claim for the loss of deferred compensation benefits that had not vested at the time of the termination of his employment with Claimant; (3) the statements made in Respondent Stone's Form U-5 concerning the reasons for his termination were true, and in any event were subject to an absolute or qualified privilege against liability for defamation; (4) any alleged oral statements regarding the reasons for Respondent Stone's termination were non-actionable speculation; and (5) in any event, the alleged oral statements did not cause any damage to Respondent Stone.

RELIEF REQUESTED

At the conclusion of the evidentiary hearing, Claimant requested that the Panel award it compensatory damages in the amount of \$392,927.81, representing the unforgiven principal amount of the note, accrued interest through May 10, 2002, and reimbursed taxes. Also, Claimant sought additional interest at the rate of prime plus two percent (2%) from May 10, 2002 to the date of payment of the Award, and attorneys' fees. Further, Claimant requested that the Counterclaim be dismissed in its entirety.

Respondent Stone requested that Claimant's claims for injunctive relief and monetary damages be denied and dismissed in their entirety. In the Counterclaim, Respondent Stone requested compensatory damages in the amount of \$1,539,771.00, reformation of his Form U-5, attorney's fees, and any other relief deemed just and equitable.

OTHER ISSUES CONSIDERED AND DECIDED

On or about May 25, 2001, Claimant filed a Petition for an Immediate Injunctive Order, which asserted that injunctive relief was needed because of Claimant's likelihood of success on its claim's merits, irreparable harm and the lack of an adequate remedy at law, and a balance of relative hardships.

On or about May 31, 2001, Respondent Stone filed a Memorandum in Opposition to Claimant's Petition for an Immediate Injunctive Order, which stated that a preliminary injunction would have, in effect, given Claimant the ultimate relief without having to prove its allegations.

On or about June 1, 2001, the undersigned arbitrators (the "Panel") issued an order that denied Claimant's Petition for an Immediate Injunctive Order, stating that the Panel would issue a remedy upon full and complete hearing of the merits of this case.

On or about January 7, 2002, Respondent DW filed a Motion to Dismiss itself as a party.

On or about February 18, 2002, Claimant filed a Motion for Leave to File an Amended Statement of Claim that simplified the Statement of Claim, and removed Respondent DW as a party to this claim. On or about April 2, 2002, the Panel issued an order that granted Claimant's Motion for Leave to File an Amended Statement of Claim, and further ordered the dismissal of Respondent DW as a party to this claim, without prejudice.

On or about March 12, 2002, Respondent Stone filed a Motion for Leave to File an Amended Counterclaim, which asserted a claim of punitive damages. On or about April 4, 2002, the Panel issued an order that denied Respondent Stone's Motion for Leave to File an Amended Counterclaim.

The parties have agreed that the Award in this matter may be executed in counterpart copies.

AWARD

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

On June 6, 2000, Respondent Stone entered into an Employee Forgivable Loan Agreement with Claimant. Under the terms of the Agreement, Respondent Stone received the sum of \$475,557.53 and executed a Promissory Note ("Note") for that amount, due and payable in one lump sum on June 1, 2004. The Note provided for forgiveness of principal in equal installments on 6/1/2001, 6/1/2002, 6/1/2003 and 6/1/2004, provided that Respondent Stone remained in the full time employ of Claimant. The Note provides that if Respondent Stone's employment terminates before the first anniversary date, Claimant shall forgive 1/48th of the original principal amount of the Note for each whole month of employment since the signing of the Note. The Note contains an acceleration provision making the Note payable in full in the event that Respondent Stone's employment terminates. Respondent Stone's employment with Claimant terminated on May 11, 2001. It is uncontested that the unforgiven principal amount due under the note is \$366,575.60, to the extent that the Note may be due and payable by virtue of the termination of Respondent Stone's employment on May 11, 2001. The Note contains provisions for the recovery of interest and "any and all costs and expenses, including without limitation, reasonable attorneys' fees and disbursements incurred by Claimant in connection with the enforcement of any or all provisions of this Note and in regard to any defenses to the note or counterclaims brought in the action to enforce the Note."

Respondent Stone contends that he is not liable on the Note because of the circumstances under which he was forced to resign and he has asserted a counterclaim based on his alleged wrongful termination. He contends that in requiring his resignation, Claimant acted arbitrarily and without sufficient cause, or in bad faith, out of an improper motive. Respondent Stone contends that Claimant may not enforce the note unless it can demonstrate that the termination was justified.

Claimant contends that Respondent Stone was an "at will" employee, subject to termination without cause, and that the Note expressly provides for acceleration in the event that employment is terminated "either voluntarily or involuntarily . . . for any reason whatsoever other than disability or death." In other words, Claimant contends that the Respondent Stone could have been terminated for any reason whatsoever, or for no reason at all, and that the Note would thereby become due and payable. There is no contention made that

Respondent Stone violated any law, rule or regulation or was otherwise guilty of any serious wrongdoing in the performance of his duties. Nevertheless, Claimant contends that Respondent Stone's termination was justified by virtue of alleged inconsistent statements made during the course of an internal investigation in which Respondent Stone was peripherally involved.

Based on the evidence adduced at hearing, it is clear to the Panel that Respondent Stone was less than fully forthcoming during the internal investigation at issue and that he gave inconsistent information to the investigators. Respondent Stone has failed to produce any credible evidence of improper ulterior motive for his forced resignation. The decision to seek Respondent Stone's resignation was well within a range of reasonableness in Claimant's dealings with Respondent Stone. Accordingly, the Panel concludes that Respondent Stone's counterclaim is without merit and that the Note is enforceable in accordance with its terms.

In support of its claim for an award of attorneys' fees and disbursements, Claimant has submitted copies of statements, which it has paid to its attorneys in excess of \$180,000 in the prosecution of claims on the Note and the defense of the counterclaims asserted against it. It is reasonably estimated that an additional \$20,000 to \$30,000 has been incurred in connection with winding up the hearing of this matter. It appears that the hourly rates charged are appropriate and consistent with applicable professional standards. The Panel has sought to evaluate whether the time expended was entirely necessary and appropriate and whether the matters were handled at the appropriate level of professional experience (and therefore level of hourly billing). (It does appear that credit has been given for the unsuccessful initial effort for preliminary injunctive relief, for which the panel would have declined to award attorneys' fees and expenses.) It must be noted that the parties, particularly Respondent Stone, have aggressively pursued their claims and defenses and discovery, resulting in the expenditure of time by attorneys not typical of a case of this nature. Accordingly, the Panel concludes that an award of \$200,000 for attorneys' fees and disbursements is reasonable under the circumstances of this case.

In addition to his claims relative to allegations of wrongful termination, Respondent Stone has asserted counterclaims against Claimant on alleged defamation. The panel finds these claims to be wholly unsupported by credible evidence and wholly without merit. Specifically, the Panel finds that there were no defamatory statements attributable to Claimant and no credible evidence whatsoever of damage on account of the circumstances of his termination or any alleged defamation. Accordingly, the Panel has ordered the following:

1. Respondent Stone shall pay Claimant compensatory damages in the principal amount of \$366,575.60, together with interest equal to the rate of interest announced from time to time by Citibank, N.A. in New York, New York, as its base rate or "prime rate" of interest on loans to responsible and substantial borrowers plus two percent (2%) compounded monthly, from May 12, 2001 until paid.
2. Respondent Stone shall pay Claimant's attorneys' fees and disbursements of \$200,000.00.
3. Respondent Stone shall pay to Claimant the sum of \$ 1,000.00 representing reimbursement of Claimant's filing fee previously paid to NASD.
4. Respondent Stone's counterclaims against Claimant are dismissed, with prejudice.

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FEES

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

Filing Fees

NASD will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 1,000.00
Counterclaim filing fee	= \$ 500.00

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 person at the time of the events giving rise to the dispute. Accordingly, Claimant is assessed:

Member surcharge	= \$ 1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 4,500.00

Respondent DW is assessed:

Member surcharge	= \$ 1,200.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 4,500.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

January 15-18, 2002, adjournment by Claimant	= \$ 1,000.00
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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. Accordingly, Claimant is assessed:

Injunctive relief surcharge	= \$ 2,500.00
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Forum Fees and Assessments

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

Seven (7) Pre-hearing sessions with single arbitrator @ \$ 450.00	= \$ 3,150.00
Pre-hearing conferences: June 1, 2001 1 session	
November 9, 2001 1 session	

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November 20, 2001	1 session
December 5, 2001	1 session
March 22, 2002	1 session
April 3, 2002	1 session
April 12, 2002	1 session

One (1) Pre-hearing session with Panel @ \$ 1,200.00 = \$ 1,200.00

Pre-hearing conference: August 28, 2001 1 session

Fifteen (15) Hearing sessions @ \$1,200.00 = \$ 18,000.00

Hearing Dates:

April 16, 2002	2 sessions
April 17, 2002	2 sessions
April 18, 2002	2 sessions
April 19, 2002	2 sessions
May 6, 2002	2 sessions
May 7, 2002	2 sessions
May 9, 2002	2 sessions
May 10, 2002	1 session

Total Forum Fees = \$ 22,350.00

The Panel has assessed the total forum fees of \$ 22,350.00 jointly and severally to Respondent Stone and Claimant.

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.

Administrative costs were not incurred in this matter.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 6,600.00
Adjournment Fees	= \$ 1,000.00
Injunctive Relief Fees	= \$ 2,500.00
Total Fees	= \$ 11,100.00
Less payments	= \$ 10,300.00
Balance Due NASD	= \$ 800.00

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2. Respondent Stone is solely liable for:

<u>Counterclaim Filing Fee</u>	= \$ 500.00
<u>Total Fees</u>	= \$ 500.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD</u>	= \$ 500.00

3. Respondent DW is solely liable for:

<u>Member Fees</u>	= \$ 6,300.00
<u>Total Fees</u>	= \$ 6,300.00
<u>Less payments</u>	= \$ 6,300.00
<u>Balance Due NASD</u>	= \$ 0.00

4. Respondent Stone and Claimant are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 22,350.00
<u>Total Fees</u>	= \$ 22,350.00
<u>Less Payments</u>	= \$ 0.00
<u>Balance Due NASD</u>	= \$ 22,350.00

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

ARBITRATION PANEL

Edward J. Gay, III, Esq.	-	Public Arbitrator, Presiding Chairperson
Phillip Richard Bulliard, JD	-	Public Arbitrator
Charles A. Bosworth, III	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
Edward J. Gay, III, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

/s/
Phillip Richard Bulliard, JD
Public Arbitrator

Signature Date

/s/
Charles A. Bosworth, III
Non-Public Arbitrator

Signature Date

June 21, 2002
Date of Service (For NASD office use only)

ASD

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Respondent Stone is solely liable for:

Counterclaim Filing Fee	= \$	500.00
Total Fees	= \$	500.00
Less payments	= \$	0.00
Balance Due NASD	= \$	500.00

Respondent DW is solely liable for:

Member Fees	= \$	6,300.00
Total Fees	= \$	6,300.00
Less payments	= \$	6,300.00
Balance Due NASD	= \$	0.00

Respondent Stone and Claimant are jointly and severally liable for:

Forum Fees	= \$	22,350.00
Total Fees	= \$	22,350.00
Less Payments	= \$	0.00
Balance Due NASD	= \$	22,350.00

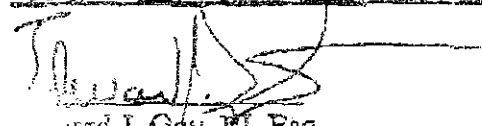
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ARBITRATION PANEL

Edward J. Gay, III, Esq.
 Phillip Richard Bulliard, JD
 Charles A. Bosworth, III

Public Arbitrator, Presiding Chairperson
 Public Arbitrator
 Non-Public Arbitrator

Concurring Arbitrators' Signatures


 Edward J. Gay, III, Esq.
 Public Arbitrator, Presiding Chairperson

June 20, 2002
 Signature Date

Phillip Richard Bulliard, JD
 Public Arbitrator

Signature Date

Charles A. Bosworth, III
 Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

NASD

Arbitration No. 01-02765

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2. Respondent Stone is solely liable for:

<u>Counterclaim Filing Fee</u>	= \$ 500.00
<u>Total Fees</u>	= \$ 500.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD</u>	= \$ 500.00

3. Respondent DW is solely liable for:

<u>Member Fees</u>	= \$ 6,300.00
<u>Total Fees</u>	= \$ 6,300.00
<u>Less payments</u>	= \$ 6,300.00
<u>Balance Due NASD</u>	= \$ 0.00

4. Respondent Stone and Claimant are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 22,350.00
<u>Total Fees</u>	= \$ 22,350.00
<u>Less Payments</u>	= \$ 0.00
<u>Balance Due NASD</u>	= \$ 22,350.00

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

ARBITRATION PANEL

Edward J. Gay, III, Esq.

Phillip Richard Bulliard, JD

Charles A. Bosworth, III

Public Arbitrator, Presiding Chairperson

Public Arbitrator

Non-Public Arbitrator

Concurring Arbitrators' Signatures

Edward J. Gay, III, Esq.

Public Arbitrator, Presiding Chairperson

Signature Date

Phillip Richard Bulliard, JD

Public Arbitrator

Signature Date

Charles A. Bosworth, III

Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

NASD

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2. Respondent Stone is solely liable for:

Counterclaim Filing Fee	= \$ 500.00
Total Fees	= \$ 500.00
Less payments	= \$ 0.00
Balance Due NASD	= \$ 500.00

3. Respondent DW is solely liable for:

Member Fees	= \$ 6,300.00
Total Fees	= \$ 6,300.00
Less payments	= \$ 6,300.00
Balance Due NASD	= \$ 0.00

4. Respondent Stone and Claimant are jointly and severally liable for:

Forum Fees	= \$ 22,350.00
Total Fees	= \$ 22,350.00
Less Payments	= \$ 0.00
Balance Due NASD	= \$ 22,350.00

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

ARBITRATION PANEL

Edward J. Gay, III, Esq.

Phillip Richard Bulliard, JD

Charles A. Bosworth, III

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-

Public Arbitrator, Presiding Chairperson

Public Arbitrator

Non-Public Arbitrator

Concurring Arbitrators' Signatures

Edward J. Gay, III, Esq.

Public Arbitrator, Presiding Chairperson

Signature Date

Phillip Richard Bulliard, JD

Public Arbitrator

Signature Date

Charles A. Bosworth, III

Non-Public Arbitrator

6/10/02

Signature Date_____
Date of Service (For NASD office use only)