

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

UBS PaineWebber, Inc. n/k/a UBS Financial Services, Inc. (Claimant) v. Brian N. Drake
(Respondent)

Case Number: 03-00933

Hearing Site: Boston, Massachusetts

Nature of the Dispute: Member vs. Associated Person.

REPRESENTATION OF PARTIES

Claimant UBS PaineWebber, Inc. n/k/a UBS Financial Services, Inc. ("UBS") hereinafter referred to as "Claimant": William M. Ejzak, Esq., Schuyler, Roche & Zwirner, P.C., Chicago, IL.

Respondent Brian N. Drake ("Drake") hereinafter referred to as "Respondent": William A. Jacobson, Esq., and Shanna L. Pitts, Esq., Law Offices of William A. Jacobson, Inc., Providence, RI. Previously represented by: Walter L. Baumgardner, Esq., Musilli, Baumgardner & Parnell, P.C., St. Clair Shores, MI.

CASE INFORMATION

Statement of Claim filed on or about: February 6, 2003.

Claimant's Response to Respondent's Amended Answer filed on or about: March 22, 2004.

Claimant signed the Uniform Submission Agreement: February 6, 2003.

Statement of Answer filed by Respondent on or about: March 13, 2003.

Amended Statement of Answer filed on or about: March 5, 2004.

Respondent did not sign the Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following cause of action: failure to repay monies owed in accordance with the terms of two promissory notes.

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

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$110,788.80 on Promissory Note #10146; compensatory damages in the amount of \$46,045.69 on Promissory Note #30623; interest, costs, attorneys' fees; and such other and further relief as the Panel deems to be just and equitable.

In its Response to Respondent's Amended Answer, Claimant requested that the claims set forth in the Statement of Claim be granted, that UBS be awarded the remedies sought in the Statement of Claim, and Drake should be granted no relief.

Respondent requested that the Panel find no cause of action and dismiss the Claim for Arbitration and award him all of his expenses, costs, and attorneys' fees incurred as a result of having to respond to the claim.

In his Amended Answer, Respondent requested that Claimant's claims be denied in their entirety, and all forum fees be assessed against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim, and appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

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, and 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 and shall pay to Claimant compensatory damages in the amount of \$110,788.80 on Promissory Note #10146.
2. Respondent is liable for and shall pay to Claimant compensatory damages in the amount of \$46,045.69 on Promissory Note #30623.
3. Respondent is liable for and shall pay to Claimant interest at New York's prime rate plus two percent beginning April 1, 2002 through April 7, 2004 for a total amount of interest of \$31,527.03.

4. Respondent is liable for and shall pay to Claimant attorneys' fees and costs in the amount of \$26,642.75 in accordance with Claimant's Promissory Notes #10146 and #30623.
5. Respondent is liable for and shall pay to Claimant the sum of \$1,000.00 to reimburse Claimant for the filing fee previously paid to NASD Dispute Resolution.
6. Any and all relief not specifically addressed herein is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$1,000.00
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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, UBS PaineWebber, Inc. n/k/a UBS Financial Services, Inc. is a party.

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

Forum Fees and Assessments

The Panel has assessed forum 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 Panel @ \$1,125.00	= \$2,250.00
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Pre-hearing conferences:	January 9, 2004	1 session
	March 8, 2004	1 session

Four (4) Hearing sessions @ \$1,125.00	= \$4,500.00
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Hearing Dates:	April 6, 2004	2 sessions
	April 7, 2004	2 sessions

Total Forum Fees	= \$6,750.00
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1. The Panel has assessed \$6,750.00 of the forum fees against Respondent.

Fee Summary

1. Claimant is solely liable for:	
Initial Filing Fee	= \$1,000.00
<u>Member Fees</u>	= \$5,200.00
Total Fees	= \$6,200.00
<u>Less payments</u>	= \$7,325.00
Refund Due to Claimant	= \$1,125.00

As stated in the "Award" section above, Respondent is solely liable for and shall reimburse Claimant for the filing fee.

2. Respondent is solely liable for:	
Forum Fees	= \$6,750.00
Total Fees	= \$6,750.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$6,750.00

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

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NASD REGULATION

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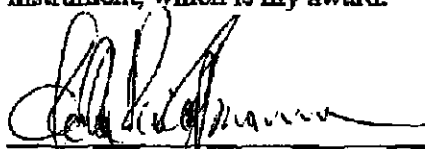
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ARBITRATION PANEL

Dallas W. Coffman	-	Non-Public Arbitrator, Presiding Chair
Linda A. Gelfand	-	Non-Public Arbitrator
John B. Haggerty	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.



Dallas W. Coffman
Non-Public Arbitrator, Presiding Chairperson

May 3, 2004

Signature Date

Linda A. Gelfand
Non-Public Arbitrator

Signature Date

John B. Haggerty
Non-Public Arbitrator

Signature Date

May 5, 2004

Date of Service (For NASD Dispute Resolution use only)

NASD Dispute Resolution
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ARBITRATION PANEL

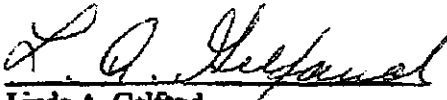
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Non-Public Arbitrator, Presiding Chairperson

Signature Date



Linda A. Gelfand
Non-Public Arbitrator

04/29/04

Signature Date

John B. Haggerty
Non-Public Arbitrator

Signature Date

May 5, 2004

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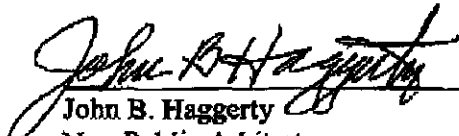
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Dallas W. Coffman
Non-Public Arbitrator, Presiding Chairperson

Signature Date

Linda A. Gelfand
Non-Public Arbitrator

Signature Date



John B. Haggerty
Non-Public Arbitrator

5/1/04

Signature Date

May 5, 2004
Date of Service (For NASD Dispute Resolution use only)