

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

UBS Financial Services, Inc.
f/k/a UBS PaineWebber, Inc.,
Claimant,
v.

Case Number: 03-03709

Hearing Site: Chicago, Illinois

U. Scott Smith,
Respondent.

Nature of the Dispute: Member Firm vs. Associated Person

REPRESENTATION OF PARTIES

UBS Financial Services, Inc., f/k/a UBS PaineWebber, Inc. ("UBS"), hereinafter referred to as "Claimant": Laura Martin, Esq. of Davidson & Grannum, LLP, located in Orangeburg, New York. Counsel Martin was later replaced by Nancy E. Campanozzi, Esq. Counsel Campanozzi was then replaced by Lisa A. Catalano, Esq. of Davidson & Grannum to represent UBS.

U. Scott Smith ("Smith"), hereinafter referred to as "Respondent": Howard L. Teplinsky, Esq. of Seidler & McErlean, located in Chicago, Illinois. Mr. Teplinsky later withdrew as counsel for Respondent, and Mr. Smith appeared *pro se*.

CASE INFORMATION

Statement of Claim filed on or about: May 22, 2003
UBS signed the Uniform Submission Agreement: February 24, 2003
Amended Statement of Claim filed on or about: November 24, 2004

Statement of Answer filed by Smith on or about: January 22, 2004
Scott did not submit a signed Uniform Submission Agreement.

UBS filed a Motion for an Award by Default or Motion to Bar Defenses on January 5, 2004.
Smith filed a Response to Motion for an Award by Default on January 22, 2004.
UBS filed a Reply to Smith's Response to Motion for an Award by Default on January 27, 2004.

Smith filed an Answer to UBS's Amended Statement of Claim on December 19, 2005.
UBS filed a Response to Smith's Answer to Amended Statement of Claim on January 6, 2006.

CASE SUMMARY

UBS asserted the following causes of action: failure to repay a promissory note.

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

1. On or about November 22, 2000, Smith accepted an offer of employment made to him by UBS.
2. Paragraphs 3 and 4 of the parties Employment Agreement specify the levels of compensation that UBS will pay Smith. Specifically, paragraph 3 states that Smith will receive a 35% payout on all PaineWebber production for the first 12 months of production.
3. In violation of the Employment Agreement, UBS unilaterally reduced Smith's payout and did not honor the terms of the parties' Employment Agreement.
4. In addition, during Smith's employment with UBS, UBS made it increasingly difficult for Smith to produce by denying him promised continued support.
5. As a result of UBS's failure to support Smith and pay him in accordance with the parties' Employment Agreement, Smith was forced to resign and seek other employment.
6. Because (a) Smith's Employment Agreement and the Employee forgivable loan ("EFL") arise from the same transaction; (b) Smith's employment and UBS terminated as a result of UBS's breach of the Employment Agreement and failure to support Smith in his employment; and (c) Smith's performance of the EFL was rendered impossible due to UBS's breach of the Employment Agreement, Smith's performance under the EFL is excused.

RELIEF REQUESTED

UBS requested compensatory damages in the amount of \$50,535.60, plus interest from June 14, 2002, calculated to be \$2,782.93 as of April 30, 2002, plus additional accrued interest hereafter through the payment of the Award; all costs, fees and attorney's fees, plus \$2,850.00 filing fee and member surcharge paid to NASD; and such other and further relief as the Panel deems just and equitable.

In its Amended Statement of Claim, UBS requested compensatory damages in the amount of \$6,500.00, plus interest from August 15, 2004 at 9% per annum, calculated to be \$146.25 as of November 25, 2004, plus additional accrued interest through the payment of the Award; all costs, fees and attorney's fees of \$5,893.32 and total cost of \$2,850.00 filing fee and member surcharge paid to NASD; and for such other and further relief as the Panel deems just and equitable.

Smith requested that the Panel deny and dismiss all claims asserted against him in UBS's Statement of Claim, and grant such further relief as is deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Pursuant to UBS's Motion for an Award by Default or Motion to Bar Defenses, the Panel entered the following Order dated March 18, 2004:

On this date, all three Panel members ruled that UBS Financial Services, Inc.'s motion for an award by default or motion to bar defenses is denied. The scheduled hearing session of July 8, 2004 in this matter will therefore remain in effect.

On July 2, 2004, UBS notified NASD that the parties settled in principle and requested that the hearing date of July 8, 2004 be postponed. The Panel granted the postponement, but assessed a postponement fee to UBS.

During the December 8, 2005 telephonic pre-hearing conference, it was agreed upon by the parties and arbitrators, that this hearing will proceed on the papers, and that Chairperson Daniel B. Lidawer will decide this matter on January 13, 2006.

AWARD

After considering the pleadings, the testimony and evidence presented by the parties, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, U. Scott Smith, is solely liable for and shall pay to Claimant, UBS Financial Services, Inc., the sum of \$15,600.00 as compensatory damages.
2. Except as otherwise specified herein, parties shall bear their own costs, including attorneys' fees.
3. Any and all relief not specifically addressed herein, including punitive damages, 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

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 Financial Services, Inc. is a party to this matter and is assessed the following fees:

Member surcharge	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,700.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

July 8, 2004, adjournment by Claimant = \$ 750.00

Forum Fees and Assessments

The Arbitrator has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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:

Three (3) Pre-hearing sessions with Panel @ \$750.00	= \$2,250.00
Pre-hearing conferences: March 12, 2004 1 session	
August 5, 2005 1 session	
December 8, 2005 1 session	
<hr/> Total Fees	<hr/> = \$2,250.00
Arbitrator honorarium for decision on the papers	= \$ 125.00
<hr/> Total Forum Fees	<hr/> = \$2,375.00

The Arbitrator has assessed 100% of the total forum fees in the amount of \$2,375.00 solely to Respondent, U. Scott Smith.

Fee Summary

1. Claimant, UBS Financial Services, Inc. is solely liable for:	
Initial Filing Fee	= \$1,000.00
Member Fees	= \$3,550.00
Postponement Fees	= \$ 750.00
Total Fees	= \$5,300.00
Less payments	= \$6,050.00
Refund Due from NASD Dispute Resolution	= \$ 750.00
2. Respondent, U. Scott Smith, is solely liable for:	
Forum Fees	= \$2,375.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$2,375.00

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

ARBITRATION PANEL

Daniel Baruch Lidawer

- Non-Public Arbitrator, Presiding Chairperson

Concurring Arbitrators' Signature

/s/ Daniel Baruch Lidawer

Daniel Baruch Lidawer

Public Arbitrator, Presiding Chairperson

1/20/06

Signature Date

1/20/06

Date of Service (For NASD Dispute Resolution use only)

NASD Dispute Resolution
 Arbitration No. 03-03709
 Award Page 4 of 4

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