

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

UBS Financial Services Inc. (f/k/a UBS PaineWebber Inc.), Claimant v. Jason Mitchell,
Respondent

Jason Mitchell, Counter-Claimant v. UBS Financial Services Inc. (f/k/a UBS PaineWebber Inc.),
Counter-Respondent

Case Number: 03-03892

Hearing Site: Las Vegas, Nevada

Nature of the Dispute: Member v. Associated Person

Nature of the Dispute: Associated Person v. Member

REPRESENTATION OF PARTIES

For Claimant/Counter-Respondent:

Brent A. Burns, Esq.
Davidson & Grannum, LLP
Northvale, New Jersey

For Respondent/Counter-Claimant:

Cory J. Hilton, Esq.
Hilton English & Associates
Las Vegas, Nevada

CASE INFORMATION

Statement of Claim filed: May 28, 2003

Claimant/Counter-Respondent's Uniform Submission Agreement signed: May 15, 2003

Statement of Answer filed by Respondent/Counter-Claimant: July 29, 2003

Counterclaim filed: July 29, 2003

Response to Counterclaim filed by Claimant/Counter-Respondent: August 8, 2003

CASE SUMMARY

Statement of Claim:

Claimant/Counter-Respondent alleged non-payment of two promissory notes that had been issued by Claimant/Counter-Respondent to Respondent/Counter-Claimant.

Respondent/Counter-Claimant denied the allegations of wrongdoing set forth in Claimant/Counter-Respondent's Statement of Claim and asserted various affirmative defenses.

Counterclaim:

Respondent/Counter-Claimant alleged unjust enrichment and breach of the covenant of good faith and fair dealing in connection with Respondent/Counter-Claimant's employment with Claimant/Counter-Respondent.

Claimant/Counter-Respondent denied the allegations of wrongdoing asserted in Respondent/Counter-Claimant's Counterclaim.

RELIEF REQUESTED

Statement of Claim:

Claimant/Counter-Respondent requested \$188,791.78 in compensatory damages, pre- and post-judgment interest and costs, including attorney's fees.

Respondent/Counter-Claimant requested dismissal of Claimant/Counter-Respondent's Statement of Claim in its entirety, and costs, including attorney's fees.

Counterclaim:

Respondent/Counter-Claimant requested rescission of two promissory notes, treble and/or punitive damages exceeding \$10,000.00, unspecified damages associated with Claimant/Counter-Respondent's conversion of Respondent/Counter-Claimant's client list and good will, interest, and costs, including attorney's fees.

Claimant/Counter-Respondent requested dismissal of Respondent/Counter-Claimant's Counterclaim.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent/Counter-Claimant did not file with NASD Dispute Resolution a properly executed submission agreement, but he is required to submit to arbitration pursuant to NASD's Code of Arbitration Procedure, and having answered the claim, he is bound by the determination of the Panel on all issues submitted.

On March 16, 2004, Claimant/Counter-Respondent filed a Motion to Bar Defenses and Compel Discovery. On March 29, 2004, Respondent/Counter-Claimant filed an Opposition to Claimant/Counter-Respondent's motion. On April 2, 2004, Claimant/Counter-Respondent filed a Reply in support of its motion. In an Order dated June 14, 2004, the Panel ordered Respondent/Counter-Claimant: (a) to provide certain discovery information; and (b) to provide NASD with "an explanation and/or documentation relating to his discovery requests and when these requests were made. If the date is after the February 27, 2004 deadline (specified in the

November 11, 2003 Order), Respondent will explain why the Panel should allow the discovery to be propounded."

Claimant/Counter-Respondent's counsel sent Respondent/Counter-Claimant's counsel letters dated June 22, 2004 and June 23, 2004, respectively, regarding Respondent/Counter-Claimant's non-compliance with the Panel's June 14, 2004 Order. Claimant/Counter-Respondent requested that NASD forward these letters to the Panel. The Panel Chair gave Respondent/Counter-Claimant a deadline of July 1, 2004 to submit a response to Claimant/Counter-Respondent's letters; NASD did not receive a response to these letters. In an Order dated August 6, 2004, the Panel ordered Respondent/Counter-Claimant: (a) to provide certain discovery information and (b) to provide NASD with the information specified in the Panel's June 14, 2004 Order regarding Respondent/Counter-Claimant's discovery requests. In addition, the Panel ordered Claimant/Counter-Respondent to submit an Affidavit of Fees within ten business days of the Panel's August 6, 2004 Order.

In response to the Panel's August 6, 2004 Order, Respondent/Counter-Claimant submitted a letter dated August 10, 2004 and Claimant/Counter-Respondent submitted an Affidavit of Fees dated August 13, 2004. The Panel considered these documents as well as a letter from Claimant/Counter-Respondent dated August 18, 2004, and in an Order dated September 14, 2004 (and served upon the parties on September 20, 2004), the Panel ordered Respondent/Counter-Claimant to provide certain certifications of compliance and to supplement its witness list. The Panel stated in its Order that if a certificate of compliance is not filed or is not filed timely, the Panel would consider issuing further sanctions against Respondent/Counter-Claimant including making an adverse inference against Respondent/Counter-Claimant, precluding Respondent/Counter-Claimant from presenting evidence and other sanctions as deemed necessary. The Panel also ruled that Respondent's discovery requests were untimely. The Panel considered further Claimant's Motion to Bar Defenses and Compel Discovery, Claimant's Affidavit of Fees, and Respondent's Response, and sanctioned Respondent/Counter-Claimant by assessing Claimant/Counter-Respondent's attorney's fees against Respondent/Counter-Claimant in the amount of \$6,036.00, as such attorney's fees had been incurred due to Respondent/Counter-Claimant's non-compliance regarding discovery matters.

Claimant/Counter-Respondent sent NASD a letter dated October 4, 2004 regarding Respondent/Counter-Claimant's non-compliance with the Panel's September 14, 2004 Order. Respondent/Counter-Claimant was given until September 21, 2004 to submit a response to Claimant/Counter-Respondent's letter; no response was received from Respondent/Counter-Claimant. The Panel issued an Order dated November 22, 2004 requesting that Claimant/Counter-Respondent submit an Affidavit of Attorney's Fees within ten business day of the Order. Claimant/Counter-Respondent submitted an Affidavit of Attorney's Fees dated November 29, 2004.

The parties 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, the documentation described above, and Respondent/Counter-Claimant Jason Mitchell's failure to comply with the Panel's Orders dated June 14, 2004, August 6, 2004, and September 14, 2004, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent/Counter-Claimant Jason Mitchell's claims are denied in their entirety.
- 2) Respondent/Counter-Claimant Jason Mitchell is liable to and shall pay Claimant UBS Financial Services Inc. the sum of \$188,791.78 in compensatory damages.
- 3) Respondent/Counter-Claimant Jason Mitchell is liable to and shall pay Claimant/Counter-Respondent UBS Financial Services Inc. the sum of \$19,783.11 in attorney's fees and costs.
- 4) Respondent/Counter-Claimant Jason Mitchell is liable to and shall pay Claimant/Counter-Respondent UBS Financial Services Inc. interest "at an interest rate 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 commercial borrowers plus two percent (2%) compounded monthly" [see Promissory Notes #30370 and #31644]. The interest shall be paid on the compensatory damages award of \$188,791.78 from December 9, 2002 until payment of this Award is made in full.
- 5) Respondent/Counter-Claimant Jason Mitchell is liable to and shall pay Claimant/Counter-Respondent UBS Financial Services Inc. \$1,000.00 as reimbursement for Claimant/Counter-Respondent UBS Financial Services Inc.'s NASD filing fee in this matter.
- 6) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$1,000.00
Respondent/Counter-Claimant's Counterclaim	= \$ 75.00

Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm UBS Financial Services Inc. is a party, and the following fees are assessed:

Member Surcharge	= \$1,700.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$2,750.00
Total Member Fees	= \$5,200.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

Four (4) pre-hearing conference sessions with the Panel @ \$1,125.00/session	= \$ 4,500.00
Pre-hearing conferences:	
November 12, 2003	1 session
June 14, 2004	1 session
August 6, 2004	1 session
November 19, 2004	1 session
Total Forum Fees	= \$ 4,500.00

The Panel assessed \$4,500.00 of the forum fees to Jason Mitchell.

Fee Summary

1. Claimant UBS Financial Services Inc. is charged with the following fees and costs:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 5,200.00
Total Fees	= \$ 6,200.00
Less payments	= \$(7,325.00)
Refund Due Claimant	= \$(1,125.00)

2. Respondent Jason Mitchell is charged with the following fees and costs:

Counterclaim Filing Fee	= \$ 75.00
Forum Fees	= \$ 4,500.00
Total Fees	= \$ 4,575.00
Less payments	= \$ (0.00)
Balance Due NASD Dispute Resolution	= \$ 4,575.00

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

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ARBITRATION PANEL

Barbara L. Edin, Esq.
Persi J. Mishel, Esq.
Robert Shifra, Esq.

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Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures



Barbara L. Edin, Esq.
Chair, Public Arbitrator

12/7/04
Signature Date

Persi J. Mishel, Esq.
Persi J. Mishel, Esq.
Public Arbitrator

Signature Date

Robert Shifra, Esq.
Robert Shifra, Esq.
Non-Public Arbitrator

Signature Date

12/7/04
Date of Service

NASD Dispute Resolution
Arbitration No. 03-03892
Award Page 6 of 6

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Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

Barbara L. Edin, Esq.
Chair, Public Arbitrator

Signature Date

Persi J. Mishel
Persi J. Mishel, Esq.
Public Arbitrator

12/6/04
Signature Date

Robert Shifra, Esq.
Non-Public Arbitrator

Signature Date

12/7/04
Date of Service

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Robert Shifra, Esq.

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Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator


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Chair, Public Arbitrator

Signature Date

Persi J. Mishel, Esq.
Public Arbitrator

Signature Date



Robert Shifra, Esq.
Non-Public Arbitrator

Signature Date

13-7-04

Date of Service

12/7/04