

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant  
UBS Financial Services Inc.

Case Number: 03-04162

Name of the Respondent  
Cortill D. Roberts

Hearing Site: Dallas, Texas

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**NATURE OF THE DISPUTE**

Member Firm v. Associated Person

**REPRESENTATION OF PARTIES**

Claimant UBS Financial Services Inc., hereinafter referred to as "Claimant": Laura Martin, Esq. of the firm of Davidson & Grannum, LLP, located in Northvale, New Jersey.

Respondent Cortill D. Roberts, hereinafter referred to as "Respondent": Pro Se.

**CASE INFORMATION**

Statement of Claim filed: June 9, 2003.

Claimant signed the Uniform Submission Agreement: May 30, 2003.

Statement of Answer filed by Respondent on: July 11, 2003.

Respondent signed the Uniform Submission Agreement: July 7, 2003.

Claimant's Reply to Respondent's Answer filed: July 21, 2003.

Claimant's Motion to Bar Defenses filed: July 9, 2004.

Claimant's Motion for Summary Judgment filed: September 15, 2004.

Claimant's Amended Statement of Claim filed: October 7, 2004.

Respondent's Motion to Reopen Hearing: October 13, 2004.

Claimant's Response to Respondent's Motion to Reopen Hearing: November 1, 2004.

### **CASE SUMMARY**

Claimant alleged that Respondent failed to pay the unforgiven and outstanding principal amount of an employee forgivable loan. This indebtedness arises from Respondent's breach of a promissory note by which he received the loan as part of his employment with Claimant.

Unless specifically admitted in his Answer, Respondent denied owing the sum portrayed in the Statement of Claim and asserted that the new manager of the office prematurely forced Respondent out before he was allowed to complete his employment with Claimant and that he was wrongfully terminated.

### **RELIEF REQUESTED**

Claimant UBS Financial Services Inc. requested:

|  |  |
|--|--|
| Compensatory Damages                       | \$38,792.89  |
| Interest                                   | From November 27, 2001<br>through payment of the award |
| Attorneys' Fees                            | As determined at hearing                               |
| Other Costs                                | As determined at hearing                               |
| Other Monetary/Non-Monetary Relief if any: | As the Arbitrator deemed just<br>and equitable.        |

At hearing, Claimant decreased the amount requested to \$36,230.60.

Respondent Cortill D. Roberts requested that he be found not liable under the Note.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On May 3, 2004, the Arbitrator denied Claimant's Motion to Bar Defenses.

Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrator determined that Respondent Cortill D. Roberts was properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

At hearing, the Arbitrator considered Claimant's Motion for Summary Judgment. After consideration of the Motion, the Arbitrator determined that the Motion was granted.

On October 13, 2004, Respondent Roberts filed a Motion to Reopen the Hearing. On or about November 1, 2004, Claimant filed a response. After review and consideration of the Motion and response, the Arbitrator denied the Motion and specifically stated that:

1. Mr. Roberts, in his initial response stated he had twelve years experience in the investment industry. Having this experience, and as an adult, he willingly signed

a straightforward Promissory Note. I shall not repeat the first paragraph of page 2 of the contract, but it is plainly explicit regarding termination of employment and the note. Further, Mr. Roberts also signed an "Employee Forgivable Loan Letter of Understanding";

2. UBS Paine Webber Inc. discharged Mr. Roberts for "lack of production". Mr. Roberts acknowledged his lack of production in his initial response, and even admitted that after given additional time to bring the production up, had not performed the duties that were expected;
3. Attached to Mr. Roberts initial response is his signed Uniform Submission Agreement, and since it appears that his address of record is correct, received all documents pertaining to this case, and was fully aware of all dates, times and places for hearings and documents; and,
4. Mr. Roberts' participation (or lack thereof) in the process indicated a disregard for all documents and agreements he signed along with the rules and regulations of the NASD Dispute Resolution.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Cortill D. Roberts is liable for and shall pay to Claimant UBS Financial Services Inc. the sum of \$36,230.60, plus interest in the amount of \$7,097.72 for a total sum due of \$43,328.32;
2. In addition, Respondent Cortill D. Roberts is liable for and shall pay to Claimant UBS Financial Services Inc. the sum of \$9,748.86 in attorneys' fees. In deciding to award attorneys' fees, the Arbitrator considered the parties' pleadings and arguments, as well as the language of the promissory note, and determined that authority existed for an award of attorneys' fees to the Claimant;
3. Furthermore, Respondent Cortill D. Roberts is liable for and shall pay to Claimant UBS Financial Services Inc. the sum of \$477.84 in costs;
4. Any additional costs of arbitration, including additional attorneys' fees, shall be borne by the party incurring the cost; and,
5. 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 |
|--------------------------|---------------|

**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 and the following member fees are assessed:

|                         |               |
|-------------------------|---------------|
| Member surcharge        | = \$ 875.00   |
| Pre-hearing process fee | = \$ 750.00   |
| Hearing process fee     | = \$ 1,000.00 |

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed: None.

**Forum Fees and Assessments**

The Arbitrator has assessed forum fees for each session conducted. A 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:

|  |               |
|--|---------------|
| Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00 | = \$ 900.00   |
| Pre-hearing conferences: April 29, 2004 1 session                |               |
| August 11, 2004 1 session  |               |
| One (1) Hearing sessions @ \$450.00                              | = \$ 450.00   |
| Hearing Date: October 13, 2004 1 session                         |               |
| Total Forum Fees   | = \$ 1,350.00 |

The Arbitrator has assessed \$1,350.00 of the forum fees to Respondent Cortill D. Roberts.

**SEE SUMMARY**

Claimant UBS Financial Services Inc. is solely liable for:

|   |               |
|---|---------------|
| Initial Filing Fee                          | = \$ 1,000.00 |
| Member Fees                                 | = \$ 2,625.00 |
| Total Fees                                  | = \$ 3,625.00 |
| Less payments                               | = \$ 4,075.00 |
| Balance Refunded by NASD Dispute Resolution | = \$ 450.00   |

Respondent Cortill D. Roberts is solely liable for:

|                                     |               |
|-------------------------------------|---------------|
| Forum Fees                          | = \$ 1,350.00 |
| Less payments                       | = \$ 0.00     |
| Balance Due NASD Dispute Resolution | = \$ 1,350.00 |

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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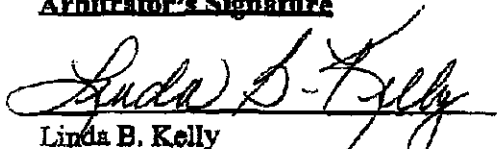
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**ARBITRATION PANEL**

Linda B. Kelly - Non-Public Arbitrator, Presiding Chairperson

**Arbitrator's Signature**



Linda B. Kelly  
Non-Public Arbitrator, Presiding Chairperson

11-30-04  
Signature Date

11/30/04 llm  
Date of Service (For NASD Dispute Resolution office use only)