

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

In the Matter of the Arbitration Between:

Name of the Claimant  
UBS Financial Services Inc.

Case Number: 03-05090

Name of the Respondent  
Scott M. Butler

Hearing Site: Atlanta, Georgia

Nature of the Dispute: Member vs. Associated Person.

**REPRESENTATION OF PARTIES**

For UBS Financial Services, Inc., hereinafter referred to as "Claimant": Michael F. Braun, Esq. and William M. Ejzak, Esq., Schuyler, Roche & Zwirner, P.C., Chicago, Illinois.

For Scott M. Butler, hereinafter referred to as "Respondent": J. Pat Sadler, Esq., Sadler & Hovdesven, P.C., Atlanta, Georgia.

**CASE INFORMATION**

Statement of Claim filed on or about: July 10, 2003.

Claimant signed the Uniform Submission Agreement: July 10, 2003.

Statement of Answer filed by Respondent on or about: September 22, 2003.

Respondent signed the Uniform Submission Agreement: September 24, 2003.

UBS's Motion for Summary Judgment and Index of Cases Cited in UBS's Motion for Summary Judgment filed on or about: April 12, 2004.

Response of Respondent Scott M. Butler to UBS' Motion for Summary Judgment filed on or about: April 16, 2004.

UBS's Reply in Support of its Motion for Summary Judgment filed on or about: April 22, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of promissory note; equitable estoppel; and, judicial estoppel. The causes of action relate to Respondent's resignation of employment from Claimant.

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 damages in the amount of \$427,911.71, plus pre-award and post-award interest at the maximum rates authorized by law, all costs and expenses incurred in connection with this action, including its reasonable attorneys' fees, and granting Claimant such other and further relief as the Panel deemed to be just and equitable.

Respondent requested that the Statement of Claim be dismissed, with all costs and expenses charged to Claimant.

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

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

Claimant filed a Motion for Summary Judgment which asserted that it is entitled to summary judgment on its claim as a matter of law because execution of the promissory note and the default are undisputed and Respondent's defenses are legally insufficient. In response, Respondent asserted Claimant, based upon its own prior conduct, is itself estopped from seeking summary judgment, material questions of fact exist which must be proven by testimony and documentary evidence at the hearing, and in accordance with the NASD Code of Arbitration Procedure (the "Code"), summary judgment is never appropriate in any NASD arbitration proceeding. On or about April 29, 2004, the arbitration panel issued an order which granted Claimant's Motion for Summary Judgment.

### **AWARD**

After considering the pleadings, the Motion for Summary Judgment, Respondent's response and Claimant's reply, the undersigned arbitrators (the "Panel") have decided in full and final resolution of the issues submitted for determination as follows:

Respondent is liable and shall pay to Claimant the sum of \$427,911.71, pre and post-judgment interest specifically excluded.

Any and all claims for relief not specifically addressed herein, including all requests for costs and attorneys' fees, are 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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is a party.

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

### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournments were filed in this matter.

### **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.

No injunctive relief fees were incurred in this matter.

### **Forum Fees and Assessments**

The Panel 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:

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$450.00
Pre-hearing conference: April 27, 2004 1 session	
One (1) Pre-hearing session with the Panel @ \$1,125.00	= \$1,125.00
Pre-hearing conference: January 23, 2004 1 session	
<hr/> Total Forum Fees	<hr/> = \$1,575.00

The Panel has assessed \$787.50 of the forum fees to Claimant.  
The Panel has assessed \$787.50 of the forum fees to Respondent.

### **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 are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred in this matter.

### **FEE SUMMARY**

Claimant is solely liable for:

Initial Filing Fee	= \$1,000.00
Member Fees	= \$5,200.00
Forum Fees	= \$787.50

---

Total Fees	= \$6,987.50
Less payments	= \$6,987.50

---

Balance Due NASD Dispute Resolution	= \$0.00
-------------------------------------	----------

Respondent is solely liable for:

Forum Fees	= \$787.50
------------	------------

---

Total Fees	= \$787.50
Less payments	= \$0.00

---

Balance Due NASD Dispute Resolution	= \$787.50
-------------------------------------	------------

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

**ARBITRATION PANEL**

Marian Cover Dockery, Esq.	-	Non-Public Arbitrator, Presiding Chair
Michael J. Stern	-	Non-Public Arbitrator
Thomas C. Moxley	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/S/\_\_\_\_\_  
Marian Cover Dockery, Esq.  
Non-Public Arbitrator, Presiding Chair

\_\_\_\_\_  
Signature Date

\_\_\_\_\_/S/\_\_\_\_\_  
Michael J. Stern  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_/S/\_\_\_\_\_  
Thomas C. Moxley  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

May 7, 2004  
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution  
Arbitration No. 03-05090  
Award Page 4

Total Fees	= \$6,987.50
Less payments	= \$6,987.50

Balance Due NASD Dispute Resolution	= \$0.00
-------------------------------------	----------

Respondent is solely liable for:  
Forum Fees

= \$787.50

Total Fees	= \$787.50
Less payments	= \$0.00

Balance Due NASD Dispute Resolution	= \$787.50
-------------------------------------	------------

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

#### ARBITRATION PANEL

Marian Cover Dockery, Esq.	-	Non-Public Arbitrator, Presiding Chair
Michael J. Stern	-	Non-Public Arbitrator
Thomas C. Moxley	-	Non-Public Arbitrator

#### Concurring Arbitrators' Signatures

Marian Cover Dockery  
Marian Cover Dockery, Esq.  
Non-Public Arbitrator, Presiding Chair

May 6, 2004  
Signature Date

\_\_\_\_\_  
Michael J. Stern  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Thomas C. Moxley  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution office use only)

Total Fees	= \$6,987.50
Less payments	= \$6,987.50

Balance Due NASD Dispute Resolution	= \$0.00
-------------------------------------	----------

Respondent is solely liable for: Forum Fees	= \$787.50
--	------------

Total Fees	= \$787.50
Less payments	= \$0.00

Balance Due NASD Dispute Resolution	= \$787.50
-------------------------------------	------------

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

**ARBITRATION PANEL**

Marian Cover Dockery, Esq.	-	Non-Public Arbitrator, Presiding Chair
Michael J. Stern	-	Non-Public Arbitrator
Thomas C. Moxley	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Marian Cover Dockery, Esq.  
Non-Public Arbitrator, Presiding Chair



Michael J. Stern  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

5/05/04

\_\_\_\_\_  
Signature Date

Thomas C. Moxley  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution office use only)

MAY 5

Total Fees	= \$6,987.50
Less payments	= \$6,987.50

Balance Due NASD Dispute Resolution	= \$0.00
-------------------------------------	----------

Respondent is solely liable for:  
Forum Fees

= \$787.50

Total Fees	= \$787.50
Less payments	= \$0.00

Balance Due NASD Dispute Resolution	= \$787.50
-------------------------------------	------------

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

**ARBITRATION PANEL**

Marian Cover Dockery, Esq.  
Michael J. Stern  
Thomas C. Moxley

Non-Public Arbitrator, Presiding Chair  
Non-Public Arbitrator  
Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Marian Cover Dockery, Esq.  
Non-Public Arbitrator, Presiding Chair

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Michael J. Stern  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

  
\_\_\_\_\_  
Thomas C. Moxley  
Non-Public Arbitrator

  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution office use only)