

NASD DISPUTE RESOLUTION AWARD
NASD DISPUTE RESOLUTION

CASE: 03-05165

UBS Financial Services Inc. f/k/a UBS PaineWebber, Inc., Claimant v. Victor Patricio Galvez, Respondent.

ATTORNEYS:

For Claimant, UBS Financial Services Inc. f/k/a UBS PaineWebber, ("Claimant"), appeared Laura Martin, Esq., of the firm Davidson & Grannum, LLP, Northvale, NJ.

Respondent, Victor Patricio Galvez, ("Respondent"), appeared pro se, Chula Vista, CA.

NATURE OF DISPUTE: Member v. Associated Person

DATE FILED: July 15, 2003

CASE SUMMARY: Claimant alleged that Respondent failed to repay an unforgiven outstanding principal amount of an employee forgivable loan as well as a commission deficit. Claimant maintained that due to Respondent's actions, the corporation suffered financial losses.

ARBITRATOR'S REPORT:

In the matter of the Employee Forgivable Loan:

The arbitrator finds for the Claimant in the amount of \$2,949.22 plus interest at the Applicable Federal Rate. The claim for attorney's fees associated with the EFL is denied. The promissory note (Exhibit C of Statement of Claim) states, "If employee's employment with PaineWebber shall terminate, whether voluntarily or involuntarily, other than by reason of Disability (as hereinafter defined) or death, no part of the unpaid Principal amount shall be forgiven." It appears that some negotiation, and perhaps even a reduced settlement, occurred between the Respondent and a representative of UBS. However, that conversation and agreement was never put into writing. The Respondent has provided a copy of his check register (Exhibit D of Statement of Claim), but there is no proof of delivery and the Respondent did not follow up with UBS when that check was not cashed. The Respondent also provided his 2001 W-2 (Exhibit B of Statement of Claim), which reflects "EFL forgv" in the amount of \$3,808.33 but that likely accounts for the portion forgiven in March 2001. In absence of any documentation as to the reduced agreement and payment in accordance to that agreement, the terms of the original promissory note should be followed.

In the matter of the commission deficit:

The arbitrator denies the claim in its entirety, including interest and attorneys' fees. Mr. Galvez resigned from UBS on 11/30/01. It appears that the client at the source of the commission reversal signed a transfer form on 12/07/01 (Exhibit F of the Statement of Claim). Sometime during the month of December, Mr. Kett, in his capacity as branch manager, and Mr. Gerardo Meave, in his capacity as FA, made a decision to reverse several mutual fund transactions that

resulted in a commission deficit of \$8,420.58. The Statement of Claim asserts that Mr. Kett discussed this reversal with Mr. Galvez and that Mr. Galvez agreed to repay UBS for the amount of the deficit. There was no written evidence of that agreement provided to the NASD. The Claimant's Reply to Respondent's Answer states that the client "initiated a complaint in a letter to Mr. Meave" (Exhibit A of Reply to Respondent's Answer). It appears that this complaint letter initiated the discussion regarding these mutual fund trades and the ultimate reversal of those transactions. The letter from Mr. Bustillos was dated January 14th, which was weeks after the transactions were reversed. The letter appears to be synopsis of the events, not an initiating letter. Mr. Bustillos ultimately transferred the account to Mr. Galvez at Citigroup.

Claim Data

Claim: \$2,949.22
Interest: \$303.87

Claim: \$8,420.58
Interest: \$904.59
Filing Fees: \$.00
Other: \$3,895.00

Award Data

Award: \$2,949.22
Interest: At the applicable federal rate
from 01/01/02 until paid.
Award: \$.00
Interest: \$.00
Filing Fees: \$.00
Other: \$.00

AWARD: The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) Respondent is liable for and shall pay to the Claimant \$2,949.22. 2) Respondent is liable for and shall pay to the Claimant interest at the applicable federal rate from 01/01/02 until paid in full. 3) All other relief requests are denied. 4) NASD Dispute Resolution shall retain the \$1,050.00 filing fee that the Claimant deposited previously.

OTHER FEES: Pursuant to Rule 10333 of the Code, Respondent has paid to NASD Dispute Resolution the \$425.00 Member Surcharge previously invoiced.

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Wendy L. Harris

Sole Non-Public Arbitrator

AFFIRMATION

I, Wendy L. Harris, do hereby affirm, upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.

Wendy L. Harris
Wendy L. Harris

2/11/04
Signature Date

February 25, 2004
Date of Service (For NASD-DR office use only)