

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Scott Silver v. UBS Financial Services, Inc.

Case Number: 04-02832

Hearing Site: New York, New York

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

Claimant Scott Silver hereinafter referred to as "Claimant": Martin P. Unger, Esq., Certilman Balin Adler & Hyman, LLP, East Meadow, NY.

Respondent UBS Financial Services, Inc. hereinafter referred to as "Respondent": Marjorie Kaye Jr., Esq., Jackson Lewis, LLP., New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: April 15, 2004.

Claimant filed response to Counterclaim on or about: August 3, 2004.

Claimant signed the Uniform Submission Agreement: April 15, 2004.

Statement of Answer and Counterclaim filed by Respondent, UBS on or about: July 23, 2004.

Respondent UBS signed the Uniform Submission Agreement: July 9, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: breach of Employment Agreement, libel and slander of Form U-5, compensation, and wrongful termination.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

In its Counterclaim, Respondent asserted the following cause of action: failure to repay promissory note.

Unless specifically admitted in its Answer, Claimant denied the allegations made in the Counterclaim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$3,000,000.00, plus punitive damages in the amount of \$2,000,000.00, interest on the award from June 1, 2001, attorneys' fees, and that the costs of this arbitration be assessed against Respondent. In addition, Claimant requested that Respondent be ordered to amend the Form U-5 so as to report that the reason given on the original Form U-5 was false and malicious and that Respondent's termination of Claimant's employment was without just cause.

Respondent requested compensatory damages in the amount of \$ 602,008.13, plus interest, attorneys' fees, and costs.

OTHER ISSUES CONSIDERED AND DECIDED

In accordance with Rule 10308 of the NASD Code of Arbitration Procedure, based upon the Claimant's claims of libel/slander and wrongful termination, a public panel should have been appointed. By letters dated June 29 and June 30, 2005, Claimant and Respondent respectively, confirmed their acceptance of the full industry Panel that was appointed.

The parties have 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 testimony and evidence presented at the hearing, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' monetary claims are denied in their entirety.
2. Respondents' counter-claims are denied in their entirety.
3. The Panel recommends the expungement of the Reason for Termination and accompanying Termination Comment as reported in item 3 on the Form U-5 filed with Central Registration Depository ("CRD") on Claimant's behalf by Respondent UBS Financial Services, Inc. The Reason for Termination as reported on the Form U-5 is "permitted to resign." The Reason for Termination should be expunged and replaced with "discharged." The Termination Comment as reported on the Form U-5 states "PERMITTED TO RESIGN AFTER REVIEW OF DISCIPLINARY RECORD AND CUSTOMER COMPLAINT HISTORY." The Termination Comment should be expunged and replaced with "TERMINATED FOR POOR PRODUCTION." The expungement recommendation is based on the defamatory nature of the information contained in CRD as the Panel finds the Form U-5 language to be false and

defamatory.

The Panel finds no malice by Respondent, therefore the qualified privilege afforded U-5 language by both Connecticut and New York State law applies. The Panel notes that New York State law may afford U-5 language an absolute privilege but the Panel will need not consider that since the Panel does not find malice by Respondent.

4. 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	= \$ 600.00
Counter claim filing fee	= \$ 1,250.00

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 is a party.

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,000.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. 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:

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: December 9, 2004 1 session	
One (1) Pre-hearing session with Panel @ \$1,200.00	= \$ 1,200.00
Pre-hearing conference: October 13, 2004 1 session	
Fourteen (14) Hearing sessions @ \$1,200.00	= \$ 16,800.00
Hearing Dates: March 8, 2005 2 sessions	
March 9, 2005 2 sessions	
April 20, 2005 2 sessions	
April 21, 2005 2 sessions	
April 22, 2005 2 sessions	
May 6, 2005 2 sessions	
June 10, 2005 2 sessions	
Total Forum Fees	= \$ 18,450.00

1. The Panel has assessed \$18,450.00 of the forum fees to UBS.

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

1. Claimant requested copies of hearings tapes for March 8 and 9, 2005. = \$ 105.00

Fee Summary

1. Claimant Silver is solely liable for:

Initial Filing Fee	= \$ 600.00
<u>Administrative Costs</u>	= \$ 105.00
Total Fees	= \$ 705.00
<u>Less payments</u>	= \$ 1,905.00
Refund Due Claimant	= \$ 1,200.00

2. Respondent UBS is solely liable for:

Filing Fee	= \$ 1,250.00
Member Fees	= \$ 8,550.00
<u>Forum Fees</u>	= \$18,450.00
Total Fees	= \$28,250.00
<u>Less payments</u>	= \$11,500.00
Balance Due NASD Dispute Resolution	= \$16,750.00

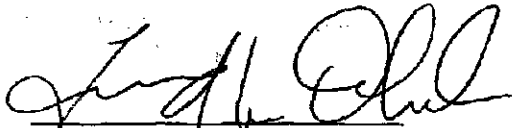
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Leonard M. Bakal, Esq.	-	Non-Public Arbitrator, Presiding Chairperson
Andrew Reegen	-	Non-Public Arbitrator
Fred Shinagel	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.



Leonard M. Bakal, Esq.
Non-Public Arbitrator, Presiding Chairperson

July 27, 2005
Signature Date

Andrew Reegen
Non-Public Arbitrator

Signature Date

Fred Shinagel
Non-Public Arbitrator

Signature Date

July 28, 2005
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Leonard M. Bakal, Esq.	-	Non-Public Arbitrator, Presiding Chairperson
Andrew Reegen	-	Non-Public Arbitrator
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Leonard M. Bakal, Esq.
Non-Public Arbitrator, Presiding Chairperson

Signature Date



Andrew Reegen
Non-Public Arbitrator

07/27/05

Signature Date

Fred Shinagel
Non-Public Arbitrator

Signature Date

July 28, 2005

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

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Leonard M. Bakal, Esq.
Non-Public Arbitrator, Presiding Chairperson

Signature Date

Andrew Reegen
Non-Public Arbitrator

Signature Date



Fred Shinagel
Non-Public Arbitrator

Signature Date

July 28, 2005
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