
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Sam D. Timpano

Case Number: 04-04865

Names of the Respondents
UBS Financial Services, Inc.
Merrill Lynch Pierce Fenner & Smith Incorporated

Hearing Site: Orlando, Florida

Nature of the Dispute: Associated Person vs. Member.

REPRESENTATION OF PARTIES

For Sam D. Timpano, hereinafter referred to as "Claimant": Marc S. Dobin, Esq., Dobin & Jenks, LLP, Jupiter, Florida.

For Respondent UBS Financial Services, Inc. ("UBS"): Michael W. Casey, III, Esq., Epstein Becker & Greene, P.C., Miami, Florida.

For Respondent Merrill Lynch Pierce Fenner & Smith Incorporated ("Merrill Lynch"): Jason T. Edelman, Esq., Rubin Fortunato Harbison & Dougherty, P.C., Paoli, Pennsylvania.

CASE INFORMATION

Statement of Claim filed on or about: July 7, 2004.

Claimant signed the Uniform Submission Agreement: July 6, 2004.

Statement of Answer and Counterclaim filed by Respondent Merrill Lynch on or about: September 14, 2004.

Respondent Merrill Lynch signed the Uniform Submission Agreement: August 13, 2004.

Statement of Answer, Counterclaim, and Motion to Dismiss filed by Respondent UBS on or about: September 24, 2004.

Amended Counterclaim filed by Respondent UBS on or about: September 30, 2004.

Respondent UBS signed the Uniform Submission Agreement: September 20, 2004.

Answer to the Counterclaim of Respondent Merrill Lynch filed by Claimant on or about: October 22, 2004.

Answer to the Counterclaim of Respondent UBS filed by Claimant on or about: October 22, 2004.

Motion to Bar Claimant from Presenting any Matter, Arguments or Defenses in Response to Respondent Merrill Lynch's Counterclaim filed by Respondent Merrill Lynch on or about: November 5, 2004.

Response to Respondent Merrill Lynch's Motion to Bar filed by Claimant on or about:
November 16, 2004.

Motion to Bar Claimant from Presenting any Matter, Arguments or Defenses in Response to
Respondent UBS' Counterclaim filed by Respondent UBS on or about: November 11, 2004.

Response to Respondent UBS' Motion to Bar filed by Claimant on or about: November 16,
2004.

Motion for Judgment as a Matter of Law on Respondent UBS' Counterclaim filed by UBS on or
about: June 3, 2005.

Opposition to Motion for Judgment as a Matter of Law on UBS' Counterclaim filed by Claimant
on or about: June 7, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: defamation; wrongful termination; breach of contract; and, negligence. The causes of action relate to Claimant's employment with, and subsequent departure from, two member firms.

Unless specifically admitted in its Answer, Respondent UBS denied the allegations made in the Statement of Claim and asserted various affirmative defenses. Additionally, Respondent UBS asserted the following causes of action against Claimant: breach of contract and failure to honor a fully executed settlement agreement ("Settlement Agreement").

In his response, Claimant denied all liability with respect to Respondent UBS' Counterclaim.

Unless specifically admitted in its Answer, Respondent Merrill Lynch denied the allegations made in the Statement of Claim and asserted various affirmative defenses. Additionally, Respondent Merrill Lynch asserted the cause of action of breach of contract against Claimant with respect to Claimant's alleged failure to repay the balance due pursuant to the terms of a fully executed promissory note ("Promissory Note").

In his response, Claimant denied all liability with respect to Respondent Merrill Lynch's Counterclaim.

RELIEF REQUESTED

Claimant requested compensatory damages in the combined amount of \$2,000,000.00, representing \$975,000.00 jointly and severally against Respondents UBS and Merrill Lynch, and \$1,025,000.00 solely against Respondent Merrill Lynch, an unspecified amount of punitive damages, and reimbursement of all costs associated with this arbitration. Claimant further requested that the Panel enter an award removing all defamatory language from Claimant's Form U-5. Additionally, Claimant requested dismissal of Respondent UBS' and Merrill Lynch's Counterclaims and, with respect to Respondent Merrill Lynch's Counterclaim, requested an award of attorneys' fees pursuant to Fla. Stat. Section 57.105(b). Finally, during the evidentiary hearing, Claimant requested an award of attorneys' fees pursuant to Fla. Stat. Section 57.105(b) with respect to Respondent UBS' Counterclaim.

Respondent UBS requested that the Panel dismiss Claimant's claims with prejudice. In its Counterclaim, Respondent UBS requested that the Panel enforce the terms of the Settlement Agreement and further requested reimbursement of training costs in the amount of \$28,333.39, plus prejudgment interest accruing from March 26, 2004, attorneys' fees and costs.

Respondent Merrill Lynch requested that the Panel dismiss Claimant's claims in their entirety and in its Counterclaim requested that the Panel award Respondent Merrill Lynch the outstanding balance of \$86,682.00 due under the Promissory Note, plus interest of \$296.37 per month accumulating from July, 2004 through final payment of the outstanding loan balance, and reasonable attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

On or about November 22, 2004, the Panel issued an Order denying Respondents Merrill Lynch and UBS' respective Motion[s] to Bar Claimant from Presenting any Matter, Arguments or Defenses in Response to Respondents Merrill Lynch and UBS' Counterclaims.

On or about June 3, 2005, Claimant and Respondent Merrill Lynch filed a notice of settlement of all claims asserted against each other in Claimant's Statement of Claim and Respondent Merrill Lynch's Counterclaim.

On or about June 13, 2005, the Panel issued an Order denying Respondent UBS' Motion for Judgment as a Matter of Law on Respondent UBS' Counterclaim.

During the evidentiary hearing after close of Claimant's case, Respondent UBS moved to dismiss Claimant's claims in their entirety and further moved for judgment on its Counterclaim. The Panel granted Respondent UBS' motion to dismiss only as to that portion of Claimant's claims asserting that Respondent UBS induced Respondent Merrill Lynch to fire Claimant. Otherwise, the Panel denied the remainder of Respondent UBS' two motions.

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 testimony and evidence presented at the hearing, and the *post-hearing submissions (if any)*, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

With respect to Claimant's claims against Respondent UBS, Respondent UBS is liable on the common law claim of defamation related to comments made by a broker associated with Respondent UBS to a former client of Claimant. Respondent UBS shall pay to Claimant compensatory damages in the amount of \$1.00.

With respect to Respondent UBS' Counterclaim, Claimant is liable on the claim for breach of contract and shall pay to Respondent UBS the sum of \$28,333.39, subject to Paragraphs 1-3, below:

1. If within 30 calendar days of the date of issuance of this Award, Claimant executes and tenders to Respondent UBS the certification ("Certification") specified in Paragraph 4 of the Agreement to Repay Training Costs executed by Claimant (see Joint Exhibit 48, at page UBS/Timpano 218), to the effect that Claimant has no intention of returning to work in the securities industry in any capacity, then Claimant will owe Respondent UBS nothing on UBS' Counterclaim, and neither Claimant nor Respondent UBS will be deemed to have prevailed on this breach of contract claim.
2. If, at any time thereafter, Claimant should reenter or seek to reenter the securities industry in any capacity, then Claimant shall pay to Respondent UBS the sum of \$28,333.39, together with interest at the legal rate, calculated from the date Claimant executes the Certification, and Respondent UBS will be deemed to have prevailed on this breach of contract claim.
3. If Claimant does not timely execute and tender the Certification, then Claimant shall pay to Respondent UBS the sum of \$28,333.39, together with interest at the legal rate, calculated from the date of issuance of this Award, and Respondent UBS will be deemed to have prevailed on this breach of contract claim.

If Claimant does not execute and tender the Certification in a timely manner, or if after executing and tendering the Certification Claimant reenters the securities industry, then Respondent UBS, as the prevailing party, is directed by the Panel to a court of competent jurisdiction for a determination as to entitlement and amount of attorneys' fees to be awarded in connection with Respondent UBS' Counterclaim.

Claimant and Respondent UBS shall otherwise each bear their own costs in connection with this arbitration proceeding.

Any and all claims for relief not specifically addressed herein, including Claimant's request for expungement and Claimant's request for punitive damages, are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (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	= \$ 500.00
Respondent Merrill Lynch's Counterclaim filing fee	= \$ 1,000.00

Respondent UBS' Counterclaim 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. Accordingly, Respondents UBS and Merrill Lynch are parties and member firms.

Respondent UBS' Member surcharge	= \$2,250.00
Respondent UBS' Pre-hearing process fee	= \$ 750.00
<u>Respondent UBS' Hearing process fee</u>	<u>= \$4,000.00</u>
Respondent UBS' Total Member Fees	= \$7,000.00

Respondent Merrill Lynch's Member surcharge	= \$2,800.00
Respondent Merrill Lynch's Pre-hearing process fee	= \$ 750.00
<u>Respondent Merrill Lynch's Hearing process fee</u>	<u>= \$5,000.00</u>
Respondent Merrill Lynch's Total Member Fees	= \$8,550.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournment fees assessed during these proceedings.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

There were no three-day cancellation fees assessed during these proceedings.

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.

There were no injunctive relief fees assessed during these proceedings.

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:

Four (4) Pre-hearing sessions with the Panel @ \$1,200.00/session	= \$ 4,800.00
Pre-hearing conferences: November 22, 2004	1 session

June 13, 2005	1 session
July 8, 2005	1 session
July 10, 2005	1 session

One (1) Pre-hearing session with a single arbitrator @ \$450.00/session = \$ 450.00
Pre-hearing conference: May 25, 2005 1 session

Nine (9) Hearing sessions with the Panel @ \$1,200.00/session = \$10,800.00

Hearing Dates:	July 11, 2005	2 sessions
	July 12, 2005	2 sessions
	July 13, 2005	3 sessions
	July 14, 2005	2 sessions

Total Forum Fees = \$16,050.00

The Panel has assessed forum fees of \$7,750.00 to Claimant.

The Panel has assessed forum fees of \$7,750.00 to Respondent UBS.

The Panel has assessed forum fees of \$550.00 to Respondent Merrill Lynch..

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.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 500.00
<u>Forum Fees</u>	= \$ 7,750.00
Total Fees	= \$ 8,250.00
<u>Less payments</u>	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$ 6,550.00

Respondent UBS is solely liable for:

Counterclaim Filing Fee	= \$ 1,000.00
Member Fees	= \$ 7,000.00
<u>Forum Fees</u>	= \$ 7,750.00
Total Fees	= \$15,750.00
<u>Less payments</u>	= \$ 9,200.00
Balance Due NASD Dispute Resolution	= \$ 6,550.00

Respondent Merrill Lynch is solely liable for:

Counterclaim Filing Fee	= \$ 1,000.00
Member Fees	= \$ 8,550.00
Forum Fees	= \$ 550.00
Total Fees	= \$10,100.00
Less payments	= \$ 9,550.00
Balance Due NASD Dispute Resolution	= \$ 550.00

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

ARBITRATION PANEL

Christopher M. Shulman, Esq.	-	Public Arbitrator, Presiding Chairperson
Stan West	-	Public Arbitrator
Robert S. Natiss	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
Christopher M. Shulman, Esq.
Public Arbitrator, Presiding Chairperson

July 20, 2005
Signature Date

/s/
Stan West
Public Arbitrator

July 20, 2005
Signature Date

/s/
Robert S. Natiss
Non-Public Arbitrator

July 20, 2005
Signature Date

July 20, 2005

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

NASD Dispute Resolution
Arbitration No. 04-04865
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Respondent Merrill Lynch is solely liable for:

Counterclaim Filing Fee	= \$ 1,000.00
Member Fees	= \$ 8,550.00
Forum Fees	= \$ 550.00
Total Fees	= \$10,100.00
Less payments	= \$ 9,550.00
Balance Due NASD Dispute Resolution	= \$ 550.00

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Stan West

Robert S. Natiss

Public Arbitrator, Presiding Chairperson

Public Arbitrator

Non-Public Arbitrator

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Christopher M. Shulman, Esq.
Public Arbitrator, Presiding Chairperson

7/20/05
Signature Date

Stan West
Public Arbitrator

Signature Date

Robert S. Natiss
Non-Public Arbitrator

Signature Date

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10.19.2005 5:40PM NASD REGULATIONS
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Respondent Merrill Lynch is solely liable for:

Counterclaim Filing Fee	= \$ 1,000.00
Member Fees	= \$ 8,550.00
Forum Fees	= \$ 550.00
Total Fees	= \$10,100.00
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Signature Date

Stan West

Stan West
 Public Arbitrator

7/20/05

Signature Date

Robert S. Natiss
 Non-Public Arbitrator

Signature Date

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

Respondent Merrill Lynch is solely liable for:

Counterclaim Filing Fee	= \$ 1,000.00
Member Fees	= \$ 8,550.00
Forum Fees	= \$ 550.00
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Less payments	= \$ 9,550.00
Balance Due NASD Dispute Resolution	= \$ 550.00

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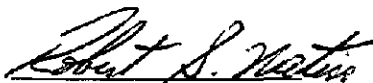
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Public Arbitrator, Presiding Chairperson

Signature Date

Stan West
Public Arbitrator

Signature Date


Robert S. Natiss
Non-Public Arbitrator

7-20-05
Signature Date

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