

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

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In the Matter of the Arbitration Between:

UBS Financial Services, Inc. (Claimant) vs. David Gardner (Respondent)

Case Number: 05-02063

Hearing Site: New York, New York

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Nature of the Dispute: Member vs. Associated Person

**REPRESENTATION OF PARTIES**

Claimant UBS Financial Services, Inc. hereinafter referred to as "Claimant": Jeffrey Newman, Esq., Davidson & Grannum, LLP, Orangeburg, NY. Previously represented by Laura Martin, Esq., and Nancy E. Campanozzi, Esq., Davidson & Grannum, LLP, Orangeburg, NY.

Respondent David Gardner hereinafter referred to as "Respondent" appeared *pro se*. Previously represented by Michael F. Bachner, Esq., Bachner & Herskovits, P.C., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: April 19, 2005.

Claimant signed the Uniform Submission Agreement: March 24, 2005.

Statement of Answer filed by Respondent on or about: June 27, 2005.

Respondent did not sign the Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: failure to pay balance due on promissory notes for three employee forgivable loans.

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

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$52,284.88, interest thereon from May 1, 2002, through the payment of the award, costs, fees and disbursements, attorneys' fees and such other and further relief as the arbitration panel deem just and equitable.

Respondent requested dismissal of the Statement of Claim in its entirety, costs and fees associated with this proceeding, an order that Claimant amend Respondent's Form U-5 and provide accurate disclosure and all other and further relief that the Panel deems just and proper.

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

Respondent Gardner did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim, is bound by the determination of the Arbitration Panel on all issues submitted.

On or about May 2, 2006, Claimant submitted a Motion for Summary Judgment. After reviewing all submissions, the Panel granted the Motion for Summary Judgment.

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, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable for and shall pay to Claimant compensatory damages in the amount of \$52,284.88, plus interest in the amount of \$18,073.37.
2. 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	= \$ 1000.00
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#### **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 event giving rise to the dispute. Accordingly, UBS Financial Services, Inc. is a party.

Member surcharge	= \$ 1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 1,700.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

February 21 – 22, 2006, adjournment by Claimant	= \$ 250.00
February 21 – 22, 2006, adjournment by Respondent	= \$ 500.00

**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:

February 21 – 22, 2006, adjournment by Claimant	= \$ 100.00
February 21 – 22, 2006, adjournment by Respondent	= \$ 200.00

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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 Panel @ \$750.00/session	= \$ 750.00
Pre-hearing conference: September 6, 2005 1 session	

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Total Forum Fees	= \$ 750.00
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1. The Panel has assessed \$750.00 of the forum fees to Respondent.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 3,550.00
Adjournment Fees	= \$ 250.00
Three-Day Cancellation Fees	= \$ 100.00
Total Fees	= \$ 4,900.00
Less payments	= \$ 5,300.00
Refund Due Claimant	= \$ 400.00

2. Respondent Gardner is solely liable for:

Adjournment Fees	= \$ 500.00
Three-Day Cancellation Fees	= \$ 200.00
Forum Fees	= \$ 750.00
Total Fees	= \$ 1,450.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 1,450.00

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

NASD REGULATION

NASD Dispute Resolution  
Arbitration No. 05-02063  
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**ARBITRATION PANEL**

Ronald R. Niclas, CFP	-	Non-Public Arbitrator, Presiding Chairperson
Jane Venckus Zirlis	-	Non-Public Arbitrator
John B. Myers, Esq.	-	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.

Ronald R. Niclas

Ronald R. Niclas, CFP  
Non-Public Arbitrator, Presiding Chairperson

6/30/06  
Signature Date

Jane Venckus Zirlis  
Non-Public Arbitrator

                      
Signature Date

John B. Myers, Esq.  
Non-Public Arbitrator

                      
Signature Date

July 6, 2006

Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

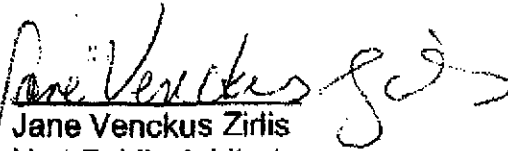
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John B. Myers, Esq.	-	Non-Public Arbitrator

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Ronald R. Niclas, CFP  
Non-Public Arbitrator, Presiding Chairperson

Signature Date

  
Jane Venckus Zirlis  
Non-Public Arbitrator

7/06/06  
Signature Date

John B. Myers, Esq.  
Non-Public Arbitrator

Signature Date

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Date of Service (For NASD Dispute Resolution use only)

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