

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

---

In the Matter of the Arbitration Between:

David Burow, Claimant v. UBS Financial Services, Inc., Respondent

Case Number: 05-02625

Hearing Site: San Francisco, California

---

Nature of the Dispute: Customer v. Member

**REPRESENTATION OF PARTIES**

For Claimant:

Burton V. McCullough, Esq.  
Law Office of  
Burton V. McCullough  
La Canada Flintridge, California

For Respondent:

Cameron Stout, Esq.  
Keesal, Young & Logan  
San Francisco, California

**CASE INFORMATION**

Statement of Claim filed: May 17, 2005

Claimant's Arbitration Brief filed: November 27, 2006

Claimant's Uniform Submission Agreement signed: April 18, 2005

Statement of Answer of Respondent UBS Financial Services, Inc. ("UBS") filed: August 1, 2005

Respondent's Arbitration Brief filed: November 27, 2006

Respondent's Uniform Submission Agreement signed: August 3, 2005

**CASE SUMMARY**

Claimant alleged breach of contract and violation of Uniform Commercial Code Section 4401 regarding the payment of checks drawn from Claimant's UBS account and made payable to Aria Consultants.

Respondent denied Claimant's allegations of wrongdoing and denied any liability to Claimant. Respondent also asserted affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested:

1. Compensatory damages in the amount proven;
2. Interest on such damages at the maximum legally permissible rate;
3. Costs; and
4. Such other and further relief as the Panel may deem just and proper.

Respondent requested:

1. Dismissal with prejudice of Claimant's Statement of Claim and all causes of action therein in their entirety;
2. Costs;
3. An assessment of forum fees against Claimant; and
4. Such other relief as the Panel deems just and proper.

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

On or about October 20, 2006, the Panel reviewed and considered the positions of the parties relative to Respondent's Motion to Dismiss. The Panel denied the Motion.

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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) All claims by Claimant are dismissed.
- 2) Each party shall bear its own costs, including attorney's fees.
- 3) All other relief not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$250.00
--------------------------	------------

### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, UBS is a party and the following fees are assessed:

Member Surcharge	= \$1,500.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$2,200.00
<b>Total Member Fees</b>	<b>= \$4,450.00</b>

### **Adjournment Fees**

The following adjournment fees are assessed:

The Parties agreed to postpone the April 3-7, 2006, hearing dates in order to mediate their dispute through NASD Dispute Resolution. Accordingly, no postponement fee was assessed.

### **Forum Fees and Assessments**

The Panel 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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

(3) Pre-hearing conference sessions with the Panel			
@ \$1,000.00/session			= \$3,000.00
Pre-hearing conferences:	September 27, 2005	1 session	
	July 18, 2006	1 session	
	October 20, 2006	1 session	
(6) Hearing sessions @ \$1,000.00/session			= \$6,000.00
Hearing Dates:	December 12, 2006	2 sessions	
	December 13, 2006	2 sessions	
	December 14, 2006	2 sessions	
<b>Total Forum Fees</b>			<b>= \$9,000.00</b>

The Panel assessed \$4,500.00 of the forum fees to Claimant.

The Panel assessed \$4,500.00 of the forum fees to Respondent.

**Fee Summary**

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 250.00
Forum Fees	= \$ 4,500.00
Total Fees	= \$ 4,750.00
Less Payments	= \$( 1,700.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 3,050.00</b>

2. Respondent is charged with the following fees and costs:

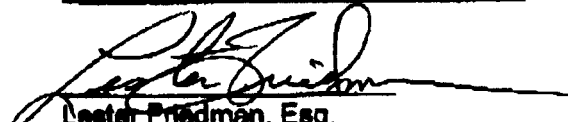
Member Fees	= \$ 4,450.00
Forum Fees	= \$ 4,500.00
Total Fees	= \$ 8,950.00
Less Payments	= \$( 4,450.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 4,500.00</b>

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

**ARBITRATION PANEL**

Lester Friedman, Esq.	-	Public Arbitrator, Presiding Chair
Gerald E. Ambinder	-	Public Arbitrator
Paul A. D. Evans	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Lester Friedman, Esq.  
Chair, Public Arbitrator

12/18/06  
Signature Date

\_\_\_\_\_  
Gerald E. Ambinder  
Public Arbitrator

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

\_\_\_\_\_  
Paul A. D. Evans  
Non-Public Arbitrator

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

12/21/06  
Date of Service

**ARBITRATION PANEL**

Lester Friedman, Esq.	-	Public Arbitrator, Presiding Chair
Gerald E. Ambinder	-	Public Arbitrator
Paul A. D. Evans	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Lester Friedman, Esq.  
Chair, Public Arbitrator

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

  
\_\_\_\_\_  
Gerald E. Ambinder  
Public Arbitrator

\_\_\_\_\_  
DEC 19 2006  
Signature Date

\_\_\_\_\_  
Paul A. D. Evans  
Non-Public Arbitrator

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

\_\_\_\_\_  
12/21/06  
Date of Service

**ARBITRATION PANEL**

Lester Friedman, Esq.	-	Public Arbitrator, Presiding Chair
Gerald E. Ambinder	-	Public Arbitrator
Paul A. D. Evans	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

---

Lester Friedman, Esq.  
Chair, Public Arbitrator

---

Signature Date

---

Gerald E. Ambinder  
Public Arbitrator

---

Signature Date

---



---

Paul A. D. Evans  
Non-Public Arbitrator

---

12/20/2006.  
Signature Date

---

12/21/06  
Date of Service