

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Evan Cole (Claimant) vs. UBS Financial Services, Inc. (Respondent)

Case Number: 05-02695

Hearing Site: Newark, New Jersey

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Nature of the Dispute: Associated Person vs. Member.

**REPRESENTATION OF PARTIES**

Claimant Evan Cole hereinafter referred to as "Claimant": David M. Fish, Esq., New York, NY.

Respondent UBS Financial Services, Inc. hereinafter referred to as "Respondent": John M. Nolan, Esq., Jackson Lewis, LLP, Morristown, NJ.

**CASE INFORMATION**

Statement of Claim filed on or about: May 23, 2005.

Claimant signed the Uniform Submission Agreement: May 16, 2005.

Statement of Answer filed by Respondent on or about: September 19, 2005.

Respondent signed the Uniform Submission Agreement: September 16, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action: wrongful termination, unjust enrichment, implied covenant of good faith and fair dealing, defamation and tortious interference.

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

**RELIEF REQUESTED**

Claimant requested unspecified compensatory damages, expungment of his Form U-5, punitive damages and any further relief the Panel deems fair and appropriate.

## **OTHER ISSUES CONSIDERED AND DECIDED**

At the hearing Respondent moved for a Directed Verdict. After due deliberation, the Panel denied the Motion.

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. Claimant's claims are dismissed in their entirety.
2. 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	= \$ 250.00
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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	= \$1,500.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,200.00

### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

April 17, 2006 adjournment by Claimant	= \$1,000.00
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### **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:

Two (2) Pre-hearing sessions with Panel @ \$1,000.00/session = \$2,000.00  
Pre-hearing conferences: January 12, 2006 1 session  
February 24, 2006 1 session

Five (5) Hearing sessions @ \$1,000.00/session = \$5,000.00  
Hearing Dates: March 21, 2006 2 sessions  
March 22, 2006 2 sessions  
May 4, 2006 1 session

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Total Forum Fees = \$7,000.00

1. The Panel has assessed \$3,500.00 of the forum fees to Claimant.
2. The Panel has assessed \$3,500.00 of the forum fees to Respondent.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 250.00
Adjournment Fee	= \$1,000.00
Forum Fees	= \$3,500.00
Total Fees	= \$4,750.00
Less payments	= \$1,250.00
Balance Due NASD Dispute Resolution	= \$3,500.00

2. Respondent is solely liable for:

Member Fees	= \$4,450.00
Forum Fees	= \$3,500.00
Total Fees	= \$7,950.00
Less payments	= \$3,700.00
Balance Due NASD Dispute Resolution	= \$4,250.00

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

**ARBITRATION PANEL**

John B. Ryan	-	Non-Public Arbitrator, Presiding Chairperson
Raymond Fleishman	-	Public Arbitrator
Graham Daw	-	Public Arbitrator

**Concurring Arbitrators' Signatures**

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John B. Ryan  
Non-Public Arbitrator, Presiding Chairperson

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

  
Raymond Fleishman  
Public Arbitrator

  
5/22/06  
Signature Date

\_\_\_\_\_  
Graham Daw  
Public Arbitrator

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

***May 25, 2006***

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Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

John B. Ryan	-	Non-Public Arbitrator, Presiding Chairperson
Raymond Fleishman	-	Public Arbitrator
Graham Daw	-	Public Arbitrator

**Concurring Arbitrators' Signatures**

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John B. Ryan  
Non-Public Arbitrator, Presiding Chairperson

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

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Raymond Fleishman  
Public Arbitrator

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

  
\_\_\_\_\_  
Graham Daw  
Public Arbitrator

5/25/06  
\_\_\_\_\_  
Signature Date

***May 25, 2006***

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Date of Service (For NASD Dispute Resolution use only)