

NASD DISPUTE RESOLUTION AWARD
NASD DISPUTE RESOLUTION

CASE: 05-04581

Karen Kahn, (Claimant) vs. UBS Financial Services Inc., Richard Fennema, Ronald Medaris, Jr., Douglas Amyett, and Donald Littlefield, (Respondents)

ATTORNEYS:

Claimant appeared pro se, Tyler, TX.

For Respondents appeared in-house counsel E. Andre Velez, Esq., Weehawken, NJ.

NATURE OF DISPUTE: Associated Person vs. Member and Associated Persons

DATE FILED: August 27, 2005

CASE SUMMARY: Claimant alleged that Respondents failed to comply with their obligation to accurately report reasons for her termination. Claimant maintained that due to Respondents' actions, she suffered financial losses.

ARBITRATOR'S REPORT: See attached Exhibit A.

Claim Data	Award Data
Claim: \$325.00	Award: \$.00
Punitive: \$5,000.00	Punitive: \$.00
Forum Fees: \$.00	Forum Fees: \$125.00
Expungement: Requested	Expungement: Granted

AWARD: The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) The claims of the Claimant are dismissed in their entirety. 2) All requests for punitive damages are denied. 3) Claimant's request for expungement is granted. 3) The Panel recommends that the termination comment filed by Respondent UBS Financial Services Inc.(CRD Number 8174) on behalf of Claimant to be expunged and replaced with "failure to comply with company policies" for Claimant Karen Kahn's (CRD Number 3078305) registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Claimant Karen Kahn must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive. 4) All other relief requests are denied. 5) NASD Dispute Resolution shall retain the \$75.00 filing fee that the Claimant deposited previously. 6) Respondents are jointly and severally liable and shall pay Claimant \$125.00 as reimbursement of one half of the forum fee.

OTHER FEES: Pursuant to Rule 10333 of the Code, Respondent, UBS Financial Services Inc., has paid to NASD Dispute Resolution the \$325.00 Member Surcharge previously invoiced.

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Award 05-04581

Carol A. Freeland

- Sole Public Arbitrator

AFFIRMATION

I, Carol A. Freeland, do hereby affirm, upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.

Carol A. Freeland
Carol A. Freeland

3.21.06
(Signature Date)

March 22, 2006
Date of Service (For NASD-DR office use only)

NASD DISPUTE RESOLUTION CASE # 05-04581
Kahn vs UBS et al

To: NASD Dispute Resolution
Attention: Jennifer Foster
Senior Legal Assistant
Northeast Region
One Liberty Plaza
165 Broadway 27th Floor
NYC, New York 10006-1400

From: Carol Freeland
Arbitrator # 11424

Dear Ms. Foster:

This letter is additional information relevant to the above-mentioned case. While I understand it is not required, I believe it will help both Claimant and Plaintiff understand how the decision made was reached. That is certainly my intent.

The following are the documents that were reviewed in this matter:

Letter from Kahn dtd 12/6/05
Second Letter from Kahn dtd 12/6/05
Documents submitted by UBS dtd 1/11/06
 *HR Connect pp 1-3, 5-8 (page 4 missing)
 *UBS/pw Code of Conduct – Selected Pages
 *UBS Compliance Bulletin 03-11 re Use of Fax Machine
 *Copy of a Fax of a UBS document titled "Memo"
 *Copy of a Job Description for a Branch Service Associate
Statement of Claim dtd 8/27/05 (Kahn)
NASD Dispute Resolution Tracking Form
Letter dtd 6/9/05 of Littlefield to Kahn
Letter dtd 6/14/05 of Isham to Littlefield
Letter dtd 6/16/05 of Littlefield to Isham
Letter dtd 6/16/05 of Isham to Littlefield
TWC notification dtd 6/10/05
Form U-5 on Kahn
UBS Document dtd 10/24/05
 *Motion to Dismiss
 *Affidavits of Fenneman, Amyett, Medaris, Littlefield

P2.

In some respects, this case is based in a "he said-she said" environment.

It is unclear whether the fax machine used was in Kahn's office (as suggested in Isham's letter) or in a "locked cage" as indicated by UBS. Since Kahn never disputes the UBS claim on the fax machine location, I assumed it was located in a secure area.

I requested a job description for Ms. Kahn. Ms. Kahn responded by indicating she did not have one. UBS sent a job description. In follow up correspondence, Ms. Kahn indicated that the job description sent by UBS was for the position of Branch Service Associate (which indeed is true) but that her role was as a Branch Office Administrator. In various documents supplied by UBS, various individuals refer to Ms. Kahn as a Branch Office Associate. UBS never refuted Ms. Kahn's claim that she was a Branch Office Administrator and not a Branch Service Associate. The Arbitrator is therefore not completely certain as to exactly what Ms. Kahn's exact title was or what her job description entailed.

I requested a UBS Employee Handbook and was supplied with one which is from Paine Webber. It has no date and no reference to UBS. In fact, none of the documents supplied by UBS carry any noted connection to Paine Webber. That relationship, if any, is entirely unclear. Ms. Kahn in her letter dated 1-12-06, indicates UBS's attorney provided "extractions" from a revised UBS handbook but goes on to indicate that she (Ms. Kahn) was given a Paine Webber handbook when she was hired. Why that would be the case and whether it is the one with which the Arbitrator was presented is unknown. Ms. Kahn did not provide an alternate handbook. My final determination relevant to this document was to accept as the accurate the Paine Webber handbook which is given to UBS employees and that it was the same or highly similar to the one given to Ms. Kahn.

The matter of who gave what to whom and under what conditions was considered. There is a major question relative to Mr. Amyett and how he came by the fax. Mr. Amyett in his affidavit says he was "presented" with the fax sheet by Ms. Kahn and that it had information about supervision of an employee. Mr. Medaris in his affidavit says that Ms. Kahn "...provided it to him (Amyett) after he asked to see it." Mr. Littlefield's affidavit says Ms. Kahn was terminated "in part" upon her admission that she had "distributed" the document in question. (Mr. Littlefield does not indicate what the "other reasons" for termination were.) Ms. Kahn says that Mr. Amyett is the one who asked to see the fax sheet and that it was he who "proceeded to copy and share / discuss the contents with others throughout the office."

The TWC Determination of Payment of Unemployment Benefits form does state that benefits will be paid and charged to the employer because it was determined by the TWC that Ms. Kahn's separation from her work was not due to "misconduct connected with the work". However, clearly that is the issue upon which UBS based its decision to terminate Ms. Kahn and is indicated in the statement on the U-5. Violation of Company policy is the basis for the termination and that is work related misconduct. The Arbitrator did not

have a copy of the UBS response to the TWC to verify what was written by UBS as the cause for termination. In any event, the TWC document and the U-5 document seem to be in conflict.

And there is the matter of the fax itself. The fax cover sheet which is the center of the dispute was not supplied in the original documents submitted by UBS. The Arbitrator requested a copy and was informed by UBS that it is no longer available. Why the single document central to this issue which was apparently copied several times over is no longer available is disturbing. And no explanation was provided. The UBS attorney did offer what he indicates is one fax which is similar. Ms. Kahn insists that the fax was blank, no names given. Yet she recognized this blank fax above all others that she would have had access to as having a higher importance. By her own admittance she thought this fax or the document that had been faxed had to do with an employee within the firm. It seems to have been elevated to a status beyond just another fax confirm sheet left in the fax machine. There is no dispute that the fax sheet carried a Confidential and Attorney Privilege stamp. That carries weight whether there was information on the form or not. Since the original is missing there is no way to know for certain whether the form was blank or had some or all information on it and obviously no way to know for certain whether it pertained to a specific employee. The form appears to deal with employee level matters (as opposed to administrative, clerical, financial or customer matters).

Conclusion

Ms. Kahn believes she has been unjustly "labeled" within the industry via the statement on her U-5. UBS believes it has a duty to report the facts in detail accurately to the NASD as to why an employee is terminated. I am concerned by the apparent manner in which the matter was handled by UBS in many regards. However, it is clear that in fact, knowingly, Ms. Kahn did violate Company Policy by removing a fax (cover sheet) from the fax, reading it although it was marked as Privileged, giving it (whether on her own or because a business associate asked for it) to another employee to see. In my judgment that is Misconduct related to Work, breaks the privilege of trust and confidence and is grounds for immediate termination.

UBS's reason for using the statement on the U-5 that the termination was relative to an employee matter to distinguish it from being client related is weak at best. If it had been relative to a client or a financial or administrative matter, would it not have mattered as much....or more? Violating Company Policy is violating Company Policy. All policies are important in their own right. Some policies may not warrant immediate termination. UBS was correct in not agreeing to drum up some palatable reason for dismissal such as the closing of the office as the reason for termination. That clearly was not the case even if such a closing was under active consideration.

Findings

Ms. Kahn requests the "over ruling of this filing to a more accurate and non-incriminating statement". The Arbitrator's decision is that an over ruling of this filing and a non-incriminating statement is denied. UBS filed the U-5 and that is required and can not be overruled. I do not know how anything could be accurately written that is not in some fashion incriminating. This becomes a semantics argument. However, it is also the Arbitrator's determination that the U-5 language be amended to omit the use of the word "employee". It is the Arbitrator's recommendation that the language be amended to state the simple accurate fact that: Ms. Kahn was terminated for failure to comply with Company Policies.

Ms. Kahn requests Punitive damages of \$5,000. The Arbitrator's decision is to deny any Punitive damages. No case for such has been made.


Ms. Kahn requests \$325.00 for the cost of Arbitration. The Arbitrator's decision is to deny this request. Ms. Kahn should bear the cost of recourse through the system of Arbitration.

UBS requests that the "NASD dismiss with prejudice the Statement of Claim in its entirety and enter a decision in favor of Respondents." The Arbitrator denies the request.

UBS requests that they be awarded attorneys fees, forum fees and other relief as the NASD may deem appropriate. The Arbitrator denies this request. UBS can and should bear the cost of defending itself on this matter.

Dispute Resolution Filing Fees It is assumed that both the Respondent and Claimant paid their own respective initial filing fees. All other costs assessed by the NASD for this arbitration are to be split 50/50. The Claimant is responsible for her own associated costs such as attorney fees. The Respondent is responsible for its own associated costs such as attorney fees.

Respectfully submitted,



Carol Freeland
Arbitrator

NASD DISPUTE RESOLUTION CASW #05-04581
Kahn vs UBS et al

MAR 12 2006

To: NASD Dispute Resolution
Via: Jennifer Foster, Senior Legal Assistant
Date: March 7, 2006
Re: Addendum to Previously Submitted Letter dtd January 24, 2006

From: Carol Freeland
Arbitrator # 11424

Dear Ms. Foster:

This Addendum is relevant to the additional document submitted in this case. In my original comments submitted on 1-24-06, I pointed out that I had requested, as additional documentation to that which was originally submitted, a copy of the job description for the position held by Ms. Kahn. Ms. Kahn responded that she did not have one. UBS sent a job description for a Branch Service Associate along with an explanation of their position regarding the job description. Ms. Kahn subsequently pointed out that her position was that of "the Branch Office Administrator" and that UBS needed to submit the correct job description. UBS complied and did submit a job description for the position that Ms. Kahn agreed she held while at UBS. I have reviewed this job description.

In her letter dated February 6, 2006, Ms. Kahn refers to herself as "the Branch Office Administrator", not as one {of them} or a {Branch Office Administrator}. Based on the second job description submitted by UBS and the duties that Ms. Kahn agreed that she had, I have assumed that Ms. Kahn was what is referred to in that job description as the Senior Branch Office Administrator. A careful study of the job responsibilities as well as accountabilities indicates that this position, among other duties, prepares branch correspondence, opens and organizes branch manager's mail, organizes office memos and outgoing correspondence, maintains personnel files, may be involved in the hiring process, handles some of the payroll responsibilities, assists with the explanation of Firm policies and procedures. All of these are examples of responsibilities that require knowledge of and adherence to Company policy. Managing incoming and outgoing faxes would certainly be within this individual's job description. {Note: It could also be said that managing faxes is part of the responsibility {stated as "tracks paperwork"} of the Branch Office Administrator as well.

The Senior Branch Office Administrator job description also says, "serves as a source for routing information to appropriate people within the Branch". There is room for interpretation of this statement: is "routing" handing out a document clearly marked as Confidential; who is an "appropriate" person; what is "information"? Clearly, the job description anticipates the exercise of good judgment. If Ms. Kahn had any question as to the nature of her duties and how they were to be exercised, it was her responsibility to seek the guidance and interpretation of her supervisor.

P2 Addendum

Ms. Kahn was aware of Company policy regarding confidentiality and sensitive matters. She was able to read the disclaimer and statement on the fax cover sheet. She knew and understood her job and had been with her Company for four years. She was given a job description and apparently performed well over the course of the four years.

The review of the "correct" job description does not change the position or decision of the Arbitrator in this matter. Please see pp 3-4 of the Letter/Award of January 26, 2006, under Conclusion and Findings.

The Arbitrator has submitted the letter for the benefit of the Claimant and the Respondent and would suggest this Addendum be submitted as well.

Respectfully submitted,

A handwritten signature in cursive script, reading "Carol Freeland", is written over a horizontal line.

Carol Freeland
Arbitrator