

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of Claimant

Joanne C. Widmaier and James Bitterman,  
Successor Trustees of the Bernice B. Bitterman  
Revocable Trust dated February 23, 1987

vs.

Case Number: 06-00215  
Hearing Site: Southfield, Michigan

Names of Respondents

UBS Financial Services, Inc.,  
Frederick L. Mirbach, and  
Philip W. Sloan

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**NATURE OF THE DISPUTE**

Customer vs. Member and Associated Persons

**REPRESENTATION OF PARTIES**

Joanne C. Widmaier and James Bitterman, Successor Trustees of the Bernice B. Bitterman Revocable Trust dated February 23, 1987 ("Claimant" or "Trust") was represented by Walter L. Baumgardner, Esq., Musilli, Brennan & Letvin, PLLC, St. Clair Shores, Michigan.

UBS Financial Services, Inc. ("UBS"), Frederick L. Mirbach ("Mirbach"), and Philip W. Sloan ("Sloan"), hereinafter collectively referred to as "Respondents," were represented by David L. Goldberg, Esq., UBS Financial Services, Inc., New York, New York.

**CASE INFORMATION**

The Statement of Claim was filed on or about January 17, 2006. The Submission Agreement of Claimant, the Bernice B. Bitterman Revocable Trust dated February 23, 1987, was signed on or about January 6, 2006, by Joanne C. Widmaier and James Bitterman, Trustees.

The Statement of Answer and Motion to Dismiss was filed jointly by Respondents on or about June 12, 2006. The Submission Agreement of UBS was signed on or about June 1, 2006. The Submission Agreement of Mirbach was signed on or about June 21, 2006. The Submission Agreement of Sloan was signed on or about June 22, 2006.

Claimant filed a Response to the Motion to Dismiss on or about July 11, 2006. Respondents filed a Reply Memorandum in Support of Motion to Dismiss was filed on or about September 25, 2006.

### **CASE SUMMARY**

Claimant asserted the following causes of action: violation of NASD and NYSE rules; negligence; respondeat superior; breach of supervisory rules; common law fraud; fraud under federal securities laws; violation of blue sky laws; and breach of fiduciary duty. The causes of action related to Claimant's allegation that Respondents allowed Alex Bitterman to withdraw funds from the Trust without authorization. Claimant further asserted that Respondents actively conspired to conceal the withdrawals.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim fails to state a claim upon which relief may be granted; Claimant's causes of action are barred by the doctrines of ratification, waiver, estoppel, contributory and/or comparative negligence; and Claimant cannot demonstrate that Respondents acted with the requisite scienter.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$ 280,000.00
Exemplary/Punitive Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondents requested that the claims asserted against them be dismissed in their entirety and that they be awarded their costs and attorneys' fees. Respondents, Mirbach and Sloan, requested that all references to this matter be expunged from their CRD records.

### **OTHER ISSUES CONSIDERED & DECIDED**

At the hearing, Respondents moved for dismissal. The Panel denied the motion without prejudice on the record.

After the direct examination of Respondent Mirbach, the parties stipulated to the dismissal of Respondent Mirbach with prejudice and agreed that it was appropriate that his CRD record be expunged of all references to this matter.

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

- 1.) Respondent, UBS Financial Services, Inc. is liable for and shall pay to Claimant, Joanne C. Widmaier and James Bitterman, Successor Trustees of the Bernice B. Bitterman Revocable Trust dated February 23, 1987, the sum of \$65,000.00 in compensatory damages;
- 2) The Panel recommends the expungement of all references to the above captioned arbitration from Respondent, Frederick L. Mirbach's, registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Mirbach, must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130, the Panel has made the following affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; Respondent Mirbach was not the Branch Manager at the time of the incidents alleged.

- 3.) The Panel recommends the expungement of all references to the above captioned arbitration from Respondent, Philip W. Sloan's, registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Sloan, must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130, the Panel has made the following affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; Respondent Sloan properly requested trust documents from Claimant which he properly forwarded to the UBS compliance department; UBS compliance staff failed to notify Respondent Sloan of any restrictions.

- 4.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 5.) Any relief not specifically enumerated, including punitive damages and attorneys' fees, is hereby denied with prejudice.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial Claim filing fee = \$ 300.00

#### **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 events giving rise to the dispute. In this matter, the member firm is UBS Financial Services, Inc.

Member surcharge = \$ 1,700.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$ 2,750.00

### **Forum Fees and Assessments**

The Panel has assessed forum fees for each hearing 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 a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: November 16, 2006 1 session	
One (1) Pre-hearing session with Panel x \$1,125.00	= \$ 1,125.00
Pre-hearing conference: September 6, 2006 1 session	
Two (2) Hearing sessions x \$1,125.00	= \$ 2,250.00
Hearing Date: December 5, 2006 2 sessions	
<b>Total Forum Fees</b>	<b>= \$ 3,825.00</b>

The Panel has assessed \$1,912.50 of the forum fees to Joanne C. Widmaier and James Bitterman, Successor Trustees of the Bernice B. Bitterman Revocable Trust dated February 23, 1987.

The Panel has assessed \$1,912.50 of the forum fees to UBS Financial Services, Inc.

### **FEE SUMMARY**

Claimant, Joanne C. Widmaier and James Bitterman, Successor Trustees of the Bernice B. Bitterman Revocable Trust dated February 23, 1987, is liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 1,912.50
<b>Total Fees</b>	<b>= \$ 2,212.50</b>
<b>Less payments</b>	<b>= \$ 1,425.00</b>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 787.50</b>

Respondent, UBS Financial Services, Inc. is liable for:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 1,912.50
<b>Total Fees</b>	<b>= \$ 7,112.50</b>
<b>Less payments</b>	<b>= \$ 5,200.00</b>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 1,912.50</b>

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

**ARBITRATION PANEL**

Kenneth J. Safran, Esq. - Public Arbitrator, Presiding Chair  
Sandra J. Budnick, Esq. - Public Arbitrator  
John R. Main - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

/s/ Kenneth J. Safran, Esq.  
Kenneth J. Safran, Esq.  
Public Arbitrator, Presiding Chair

12/12/06  
Signature Date

/s/ Sandra J. Budnick, Esq.  
Sandra J. Budnick, Esq.  
Public Arbitrator

12/13/06  
Signature Date

/s/ John R. Main  
John R. Main  
Non-Public Arbitrator

12/13/06  
Signature Date

12/13/06  
Date of Service (For NASD office use only)

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Sandra J. Budnick, Esq. - Public Arbitrator  
John R. Main - Non-Public Arbitrator

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Public Arbitrator, Presiding Chair

12/12/07  
\_\_\_\_\_  
Signature Date

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Sandra J. Budnick, Esq.  
Public Arbitrator

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John R. Main  
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