

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

PaineWebber Incorporated, (Claimant) vs. Steven L. Aaron, Stephen M. Fell as Trustee of the JTA Trust No. Three, Joshua Aaron as Beneficiary of the JTA Trust No. Three, and the JTA Trust No. Three, (Respondents) vs. Gail Bliss, J. Richard Schultz, and Jeffrey Wetherbee (Third-Party Respondents)

Case Number: 00-03612

Hearing Site: Albany, New York

REPRESENTATION OF PARTIES

Claimant, PaineWebber Incorporated, hereinafter referred to as "Claimant": Paul M. Collins, Esq., Hinman Straub, PC, Albany, NY. Previously represented by: Brian F. McDonough, Esq., Drinker Biddle & Reath LLP, New York, NY.

Respondent, Steven L. Aaron ("S. Aaron"): William A. Rome, Esq., Hoffman Pollok & Pickholz LLP, New York, NY.

Respondents, Stephen M. Fell as Trustee of the JTA Trust No. Three ("Fell") and the JTA Trust No. Three ("JTA"): Michael Present, Esq., Law Offices of Sexter & Warmflash P.C., New York, NY. Previously represented by: William E. Goydan, Esq., Wolff & Samson, P.A., Roseland, NJ.

Respondent, Joshua Aaron as Beneficiary of the JTA Trust No. Three ("J. Aaron"), did not make an appearance in this matter.

Third-Party Respondent, Gail Bliss ("Bliss"), did not make an appearance in this matter.

Third-Party Respondents, J. Richard Schultz ("Schultz") and Jeffrey Wetherbee ("Wetherbee"): Paul M. Collins, Esq., Hinman Straub, PC, Albany, NY. Previously represented by: Brian F. McDonough, Esq., Drinker Biddle & Reath LLP, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: August 18, 2000.

Amendment to Statement of Claim filed by Claimant on or about: April 5, 2002.

Reply to Counterclaim filed by Claimant on or about: January 26, 2001.

Claimant signed the Uniform Submission Agreement: August 7, 2000.

Statement of Answer filed by S. Aaron on or about: October 15, 2002.
S. Aaron did not sign a Uniform Submission Agreement.

Joint Statement of Answer, Counterclaim, and Third-Party Claim filed by Fell and JTA on or about: December 11, 2000.

Fell signed the Uniform Submission Agreement: December 12, 2000.

JTA signed the Uniform Submission Agreement: December 12, 2000.

J. Aaron did not file a Statement of Answer or sign a Uniform Submission Agreement.

Bliss did not file a Statement of Answer or sign a Uniform Submission Agreement.

Joint Statement of Answer to the Third-Party Claim filed by Schultz and Wetherbee on or about: January 26, 2001.

Schultz did not sign a Uniform Submission Agreement.

Wetherbee did not sign a Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: unjust enrichment; breach of contract; fraudulent conveyance; conversion; breach of an implied covenant of good faith and fair dealing; reformation of the trust Guaranty Agreement; estoppel; fraud; intentional interference with Claimant's contractual rights; and intentional interference with Claimant's prospective economic advantage. Claimant's claim did not involve specific financial products.

Unless specifically admitted in his Answer, S. Aaron denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a claim upon which relief can be granted; Claimant's recovery is barred due to its own negligence and/or breach of applicable rules, policies, and duties; Claimant failed to mitigate its damages; to the extent that Claimant seeks equitable relief, such relief is barred by the doctrine of unclean hands and its violation of the rules and regulations of applicable self-regulatory organizations, as well as its own internal rules, policies, and procedures; Claimant's claims are barred by the doctrines of *in pari delicto*, contributory, and/or comparative negligence; and the transfers to the Trust in question did not render S. Aaron insolvent.

Unless specifically admitted in their Answer, Fell and JTA denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant fails to state a claim for relief; Claimant's claims are barred by the Statute of Frauds; Claimant's claims are barred by the material breach of Claimant's duties to the Trust Respondents; Claimant's claims are barred by the doctrines of set-off and recoupment; Claimant's claims are barred by its

fraudulent conduct; Claimant's claims are barred by its violations of the rules and regulations of the applicable self-regulatory organizations, as well as its own internal rules, policies, and procedures; Claimant's claims are barred by the doctrines of *in pari delicto*, contributory and/or comparative negligence; and Claimant's claims are barred by its knowledge of all relevant facts relating to the transactions at issue.

In their Counterclaim and Third-Party Claim, Fell and JTA asserted the following causes of action: fraud; forgery; alteration of documents; breach of fiduciary duty; fraudulent concealment; conversion; gross negligence; breach of contract; breach of implied covenant of good faith and fair dealing; and malicious prosecution.

Unless specifically admitted in their respective Reply and Answer, Claimant, Schultz, and Wetherbee denied the allegations made in the Counterclaim and Third-Party Claim and asserted the following defenses: the claims against Schultz and Wetherbee are baseless to the point of malice; neither Schultz nor Wetherbee had any knowledge whatsoever of the issues regarding the authenticity of the Guaranty Agreements in question; and the Counterclaim and Third-Party Claim fail as a matter of sheer common sense.

RELIEF REQUESTED

Claimant requested compensatory damages in the approximate amount of \$700,000.00, together with costs, interest, attorneys' fees, and disbursements.

S. Aaron did not make any relief requests in his Statement of Answer.

In their Answer, Counterclaim, and Third-Party Claim, Fell and JTA requested:

- a. The immediate release of JTA's \$1.3 million in assets that have been wrongfully frozen;
- b. Compensatory damages for the wrongful enjoinder of JTA's assets (which includes but is not limited to lost profits from lost investment opportunities;
- c. Punitive damages for the willful, wanton, intentional, and malicious misconduct of Claimant and its employees;
- d. Attorneys' fees and costs incurred to date;
- e. A referral to the appropriate regulatory agency for an investigation of the conduct complained of herein; and
- f. Any and all other relief that the Panel deems appropriate.

In their respective Reply and Answer, Claimant, Schultz, and Wetherbee requested that the Counterclaim and Third-Party Claim be dismissed in their entirety, and that attorneys' fees be assessed against Fell and JTA. In addition, Schultz and Wetherbee requested an Order expunging all reference to this matter from their Central Registration Depository ("CRD") records.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent J. Aaron, as beneficiary of the Trust in question, was not compelled by the rules of NASD Dispute Resolution to arbitrate disputes with Claimant in this forum. J. Aaron declined to voluntarily submit to the jurisdiction of NASD Dispute Resolution in this matter.

All claims against Third-Party Respondent Bliss were permanently stayed pursuant to a March 13, 2001 Order of the Honorable Sheila Abdus-Salaam of the Supreme Court of the State of New York.

Hearings in this matter commenced on January 7, 2003. During the morning session of the hearing day on January 9, 2003, the attorneys for the parties advised the Panel that they had reached a settlement of their disputes, which was in the process of being reduced to writing for execution by parties and counsel.

Counsel for Claimant, Schultz, and Wetherbee then requested that the Panel entertain an application to expunge the claims made in this matter from the CRD records of Schultz and Wetherbee. Counsel for the Third-Party Claimants consented to the application and had no objection to the relief requested. Counsel for S. Aaron indicated that he had no objection to the application.

The hearing then proceeded with respect to the expungement request only. The Panel heard additional evidence concerning the expungement application, including the testimony of Schultz and Wetherbee.

S. Aaron, Schultz, and Wetherbee did not file with NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

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

1. The Panel recommends the expungement of all reference to the above-captioned arbitration from Third-Party Respondent Schultz's 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, Third-Party Respondent Schultz must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
2. The Panel recommends the expungement of all reference to the above-captioned arbitration from Third-Party Respondent Wetherbee's 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, Third-Party Respondent Wetherbee must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. All other requests for relief are hereby 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	= \$1,250.00
Third Party Claim filing fee	= \$ 250.00

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, PaineWebber Incorporated is a party.

Member surcharge	= \$2,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$3,500.00

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing 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: December 10, 2002 1 session

One (1) Pre-hearing session with Panel x \$1,200.00 = \$1,200.00

Pre-hearing conference: September 25, 2002 1 session

Five (5) Hearing sessions x \$1,200.00 = \$6,000.00

Hearing Dates: January 7, 2003 2 sessions

January 8, 2003 2 sessions

January 9, 2003 1 session

Total Forum Fees = \$7,650.00

The Panel is not aware of whether the matter of forum fees has been dealt with in the parties' proposed settlement agreement. To the extent that forum fees are not agreed upon by the parties in the terms of the written settlement agreement, they are to be assessed as follows:

1. The Panel has assessed \$1,200.00 of the forum fees against Claimant.
2. The Panel has assessed \$6,450.00 of the forum fees against S. Aaron.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee = \$1,250.00

Member Fees = \$6,100.00

Forum Fees = \$1,200.00

Total Fees = \$8,550.00

Less payments = \$8,550.00

Balance Due NASD Dispute Resolution = \$ 0.00

2. Fell and JTA are jointly and severally liable for:

<u>Third-Party Claim Filing Fee</u>	= \$ 250.00
<u>Total Fees</u>	= \$ 250.00
<u>Less payments</u>	= \$1,250.00
<u>Refund Due Fell and JTA</u>	= \$1,000.00

3. S. Aaron is solely liable for:

<u>Forum Fees</u>	= \$6,450.00
<u>Total Fees</u>	= \$6,450.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$6,450.00

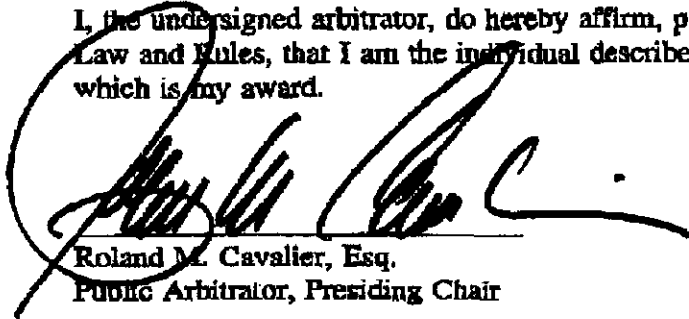
All balances are payable to NASD Dispute Resolution, and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Roland M. Cavalier, Esq.	-	Public Arbitrator, Presiding Chair
David W. Morris, Esq.	-	Public Arbitrator
Catherine Ladnier	-	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.



Roland M. Cavalier, Esq.
Public Arbitrator, Presiding Chair

2/7/03

Signature Date

David W. Morris, Esq.
Public Arbitrator

Signature Date

Catherine Ladnier
Non-Public Arbitrator

Signature Date

February 14, 2003

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

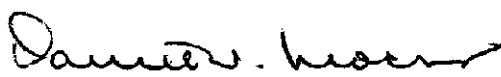
Roland M. Cavalier, Esq.	-	Public Arbitrator, Presiding Chair
David W. Morris, Esq.	-	Public Arbitrator
Catherine Ladnier	-	Non-Public Arbitrator

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.

Roland M. Cavalier, Esq.
Public Arbitrator, Presiding Chair

Signature Date


David W. Morris, Esq.
Public Arbitrator

2/8/03
Signature Date

Catherine Ladnier
Non-Public Arbitrator

Signature Date

February 14, 2003

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Roland M. Cavalier, Esq.	-	Public Arbitrator, Presiding Chair
David W. Morris, Esq.	-	Public Arbitrator
Catherine Ladnier	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

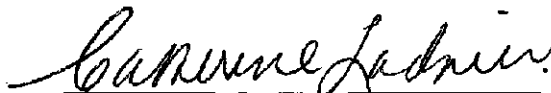
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Roland M. Cavalier, Esq.
Public Arbitrator, Presiding Chair

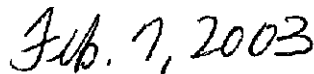
Signature Date

David W. Morris, Esq.
Public Arbitrator

Signature Date



Catherine Ladnier
Non-Public Arbitrator



Signature Date

February 14, 2003

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