

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimant

PaineWebber Incorporated.

Case No. 00-04350

Name of Respondents

Edwin H. Hayes;
First Union Corporation; and
First Union Securities, Inc.

REPRESENTATION OF PARTIES

Claimant PaineWebber Incorporated ("PaineWebber") was represented by Janiece M. Longoria, Esq., of the firm of Ogden, Gibson, White & Broocks, L.L.P., located in Houston, Texas.

Respondent Edwin H. Hayes ("Hayes") was represented by John H. McFarland, Esq., of Winstead Sechrest & Minick P.C., located in Houston, Texas. First Union Corporation and First Union Securities, Inc. ("First Union") were represented by David L. Ward, Esq. of the firm of Murphy, MacKenzie, Michaels & Sullivan, located in Boston, Massachusetts.

CASE INFORMATION

Statement of Claim filed on or about: October 2, 2000.

Claimant signed the Uniform Submission Agreement: September 28, 2000.

PaineWebber's Petition for an Immediate Injunctive Order filed on or about: October 2, 2000.
PaineWebber's Memorandum in Support of its Petition for an Immediate Injunctive Order filed on or about: October 2, 2000.

Memorandum of Law in Opposition to Claimant's Petition for Immediate Injunctive Relief filed by Respondents Hayes and First Union on or about: October 4, 2000.

Statement of Answer and Counterclaim filed by Respondent First Union and Hayes on or about: October 16, 2000.

PaineWebber's Answer to Respondents First Union and Hayes' Counterclaim filed on or about:

January 12, 2001.

Respondent Hayes Amended Answer and Counterclaim filed on or about: January 26, 2001.

PaineWebber's Objection to and Motion to Strike Respondent Hayes Amended Answer and Counterclaim filed on or about: January 29, 2001

Respondent Hayes' Second Amended Answer and Counterclaim filed on or about: January 29, 2001.

Respondent Hayes' Response to Motion to Strike and Counter-Motion to Strike filed on or about: January 29, 2001.

CASE SUMMARY

Claimant PaineWebber alleged that Respondent Hayes left their employment without paying the balance due on a promissory note executed during Hayes' employment with PaineWebber; failed to pay an outstanding deficit in his personal account; and owed PaineWebber for amounts paid to settle two customer complaints. In addition, PaineWeber sought to enforce the non-solicitation and confidentiality provisions of Hayes' employment agreement. Furthermore, PaineWebber sought damages from Hayes' new employer, First Union for its tortious conduct in connection with the hiring of Hayes. Based upon these allegations, PaineWebber brought claims for breach of contract by Hayes; tortious interference by First Union with the contractual relationship between PaineWebber and Hayes; conversion by Hayes and First Union of PaineWebber's property; misappropriation of PaineWebber's trade secrets; breach by Hayes of fiduciary duties owed to PaineWebber; and unfair competition.

Unless specifically admitted in its Answer, Respondents denied that PaineWebber was entitled to any damages resulting from Hayes leaving PaineWebber and asserted the following defenses:

1. PaineWebber is guilty of unclean hands based on its own conduct in the recruitment of brokers from competitors;
2. Any contract relied upon by Paine Webber in connection with this matter is unsupported by consideration;
3. Hayes was fraudulently induced to enter into his employment relationship with PaineWebber;
4. PaineWebber is barred from any recovery by the doctrines of selective enforcement and judicial estoppel; and
5. PaineWebber fails to state a claim upon which relief may be granted.

The answer was amended to include additional defenses, including that the claim was barred by payment; the claim was barred by PaineWebber's comparative negligence; and the claim is barred because PaineWebber constructively terminated Hayes. In addition, Respondent Hayes and First Union asserted a counterclaim against PaineWebber, asserting wrongful injunction, refusal to transfer accounts and tortious interference with business relationships; and fraudulent inducement. The counterclaim was later amended by Respondent Hayes to include claims for wrongful constructive discharge; wiretapping; invasion of privacy; intentional infliction of emotional distress; libel; conversion; and breach of contract.

Unless specifically admitted in the Answers to the Counterclaim, PaineWebber denied the allegations made in the Counterclaim and asserted the following defenses:

1. The counterclaim is barred because it fails to state a claim upon which relief can be granted;
2. The counterclaim is barred, in whole or in part, by the doctrines of consent, waiver, and/or estoppel;
3. The counterclaim is barred, in whole or in part, because PaineWebber acted at all times without malice and in good faith to enforce equal or superior legitimate business interests, and was therefore privileged in pursuing the conduct complained of by Hayes and First Union;
4. The counterclaims are barred, in whole or in part, by the statute of frauds and or the parol evidence rule; and
5. The counterclaim is barred, in whole or in part, by Hayes and First Union's own fraud, negligent misrepresentation, and/or the equitable doctrines of laches and unclean hands.

RELIEF REQUESTED

PaineWebber requested an award of compensatory damages totaling approximately \$532,950.00, representing \$409,286 due on the promissory note, \$31,080 on the deficit in Hayes' account and \$92,584.00 for customer complaints PaineWebber settled; punitive damages of an unspecified amount; interest; attorneys' fees; and other costs. Claimant also requested an injunction prohibiting Hayes from further solicitation of PaineWebber's customers and misappropriation of PaineWebber's proprietary and confidential information. In addition, PaineWebber requested that the Panel dismiss the counterclaims in their entirety.

Respondents requested dismissal of all claims made by PaineWebber and an award of damages against PaineWebber in an amount to be determined by the panel. This request was later amended by Respondent Hayes to include requests for exemplary damages and attorneys' fees based upon the Texas Civil Practice and Remedies Code.

OTHER ISSUES CONSIDERED AND DECIDED

On October 4, 2000, a telephonic hearing was held before Arbitrator James M. Benson, Jr. to consider PaineWebber's request for immediate injunctive relief. The arbitrator entered a detailed order on October 5, 2000 enjoining the Respondents from certain actions.

The panel denied PaineWebber's Objection to and Motion to Strike Respondent Hayes Amended Answer and Counterclaim.

Respondents Hayes did not file with the NASD Dispute Resolution, Inc. a properly executed submission to arbitration, but is required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

Respondent First Union Securities, Inc. did not file with the NASD Dispute Resolution, Inc. a properly executed submission to arbitration, but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

Respondent First Union Corporation was not required to submit to arbitration, but answered the claim and participated in the dismissal discussed below.

On November 27, 2000, PaineWebber dismissed with prejudice the claims against First Union Corporation and First Union Securities, Inc. In addition, First Union Corporation and First Union Securities, Inc. dismissed their counterclaims against PaineWebber with prejudice, but agreed to abide by the terms of the order entered by Chairperson Benson on October 5, 2000.

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. Respondent E. Houston Hayes is liable for and shall pay to the Claimant, PaineWebber, Inc., the sum of \$518,324.79 in compensatory damages;
2. In addition, Respondent E. Houston Hayes is liable for and shall pay to the Claimant, PaineWebber, Inc., the sum of \$20,107.52 in attorneys' fees. In deciding to award attorneys' fees, the panel considered the arguments of the parties, as well as the pleading filed on their behalf, and determined that authority existed for an award of attorneys' fees to the Claimant, PaineWebber, Inc.;
3. The injunction issued by Chairperson Benson shall remain in effect until the

award is paid in full;

4. The claims against First Union Corporation and First Union Securities, Inc. are dismissed with prejudice pursuant to the notification of November 27, 2000;
5. The counterclaim filed by First Union Corporation and First Union Securities, Inc. is dismissed with prejudice pursuant to the notification of November 27, 2000;
6. The counterclaims filed by Respondent E. Houston Hayes are dismissed and denied with prejudice;
7. Any additional costs of arbitration, including additional attorneys' fees, shall be borne by the party incurring the cost, unless specifically enumerated in the award; and
8. Any relief not specifically granted is hereby denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 1,250.00
Counter claim filing fee	= \$ 500.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. In this matter, the member firms are a party.

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

Adjournment Fees

Adjournments requested during these proceedings:

Hearing Dates/November 8-9, 2000, adjournment by First Union	= \$ 1,200.00
Hearing Dates/December 6-7, 2000, adjournment by PaineWebber	= \$ 1,200.00

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:

Three (3) Pre-hearing sessions with a single arbitrator x \$ 450.00 = \$ 1,350.00

Pre-hearing conferences:	October 4, 2000	1 session
	October 10, 2000	1 session
	November 10, 2000	1 session

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

Pre-hearing conference:	November 2, 2000	1 session
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Six (6) Hearing sessions x \$ 1,200.00 = \$ 7,200.00

Hearing Dates:	January 30, 2001	2 sessions
	January 31, 2001	2 sessions
	February 1, 2001	2 sessions

Total Forum Fees = \$ 9,750.00

The Panel has assessed \$ 9,750.00 of the forum fees to Claimant PaineWebber, Inc.

Fee Summary

Claimant PaineWebber, Inc. is solely liable for:

Initial Filing Fee	= \$ 1,250.00
Member Fees	= \$ 6,100.00
Adjournment Fee	= \$ 1,200.00
Injunctive Fee	= \$ 2,500.00
Forum Fees	= \$ <u>9,750.00</u>
Total Fees	= \$20,800.00
Less payments	= <u>(7,950.00)</u>
Balance Due NASD Dispute Resolution, Inc.	= \$12,850.00

Respondent First Union Securities, Inc. is solely liable for:

Member Fees	= \$ <u>6,100.00</u>
Total Fees	= \$ 6,100.00
Less payments	= \$ <u>0</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 6,100.00

Respondents First Union Corporation and First Union Securities, Inc. are jointly and severally liable for:

<u>Adjournment Fee/November 8-9, 2000</u>	= \$ 1,200.00
Total Fees	= \$ 1,200.00
Less payments	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,200.00

Respondents Edwin H. Hayes; First Union Corporation; and First Union Securities, Inc. are jointly and severally liable for:

<u>Counterclaim Filing Fee</u>	= \$ 500.00
Total Fees	= \$ 500.00
Less payments	= (500.00)
Balance Due NASD Dispute Resolution, Inc.	= \$ 0

All balances are due and payable to NASD Dispute Resolution, Inc.

Concurring Arbitrators' Signatures

James Mervin Benson, Jr., Esq.
Industry Arbitrator, Presiding Chair

Signature Date

Thomas A. Thornhill, Jr.
Industry Arbitrator

Signature Date

Charles E. Munson, Jr., JD
Industry Arbitrator

Signature Date

Date of Service (For NASD-DR office use only)

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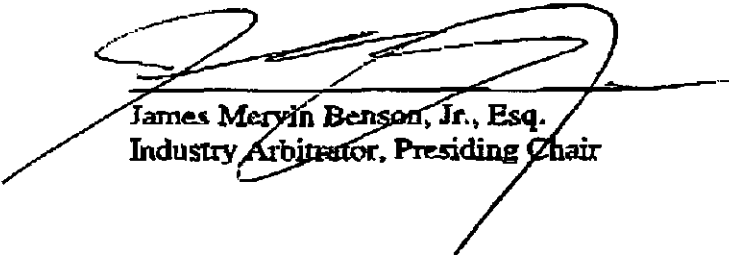
<u>Adjournment Fee/November 8-9, 2000</u>	= \$ 1,200.00
Total Fees	= \$ 1,200.00
<u>Less payments</u>	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,200.00

Respondents Edwin H. Hayes; First Union Corporation; and First Union Securities, Inc. are jointly and severally liable for:

<u>Counterclaim Filing Fee</u>	= \$ 500.00
Total Fees	= \$ 500.00
<u>Less payments</u>	= (500.00)
Balance Due NASD Dispute Resolution, Inc.	= \$ 0

All balances are due and payable to NASD Dispute Resolution, Inc.

Concurring Arbitrators' Signatures


James Mervin Benson, Jr., Esq.
Industry Arbitrator, Presiding Chair

4-10-2001
Signature Date

Thomas A. Thornhill, Jr.
Industry Arbitrator

Signature Date

Charles E. Munson, Jr., JD
Industry Arbitrator

Signature Date

Date of Service (For NASD-DR office use only)

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<u>Adjournment Fee/November 8-9, 2000</u>	= \$ 1,200.00
Total Fees	= \$ 1,200.00
Less payments	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,200.00

Respondents Edwin H. Hayes; First Union Corporation; and First Union Securities, Inc. are jointly and severally liable for:

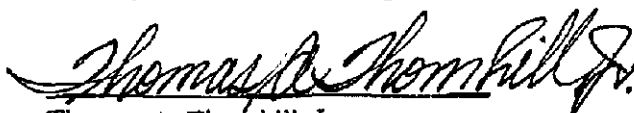
<u>Counterclaim Filing Fee</u>	= \$ 500.00
Total Fees	= \$ 500.00
Less payments	= (500.00)
Balance Due NASD Dispute Resolution, Inc.	= \$ 0

All balances are due and payable to NASD Dispute Resolution, Inc.

Concurring Arbitrators' Signatures

James Mervin Benson, Jr., Esq.
Industry Arbitrator, Presiding Chair

Signature Date



Thomas A. Thornhill, Jr.
Industry Arbitrator

4-9-01

Signature Date

Charles E. Munson, Jr., JD
Industry Arbitrator

Signature Date

Date of Service (For NASD-DR office use only)