

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

PaineWebber Incorporated, (Claimant) vs. John J. Kurz, (Respondent)

Case Number: 01-00126

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, PaineWebber Incorporated, hereinafter referred to as "Claimant": Joel E. Davidson, Esq., Davidson, Manchel & Brennan, LLP, Northvale, NJ.

Respondent, John J. Kurz, hereinafter referred to as "Respondent", *pro se*, did not appear at the hearing in this matter. Previously represented by: Brad S. Maistrow, Esq., Snow, Becker & Krauss, PC, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: January 9, 2001.

Claimant signed the Uniform Submission Agreement: January 4, 2001.

Claimant's Reply to Respondent's Counterclaim filed on or about: June 27, 2001.

Statement of Answer and Counterclaim filed by Respondent on or about: May 17, 2001.

Respondent signed the Uniform Submission Agreement: May 17, 2001.

CASE SUMMARY

Claimant asserted the following causes of action: action seeking repayment of debt pursuant to Employee Forgivable Loan and related promissory note.

Unless specifically admitted in its Answer and Counterclaim, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant breached its Agreement with Respondent by its refusal to hire a cold caller, entitling Respondent to damages; Claimant is equitably estopped from recovering from Respondent since Claimant's breach resulted in Respondent's constructive termination.

RELIEF REQUESTED

Claimant requested:

1. Compensatory damages in the amount of \$83,770.04, plus interest accruing from January 1, 2001 through payment of the Award;
2. Recovery of all costs, fees and disbursements of these proceedings including attorneys' fees; and
3. Such other relief as the panel may deem just and proper.

Respondent requested:

1. Compensatory damages in the amount of \$312,948;
2. Dismissal of Claimant's claims in their entirety; and
3. Recovery of all costs, fees and disbursements of these proceedings, including attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

During the hearing in this matter, Claimant sought sanctions based upon Respondent's failure to comply with a discovery order and failure to provide the 20-day notice of witnesses and documents to be introduced at the hearing.

Respondent failed to appear at the hearing. Upon review of the file and representations made on behalf of the Claimant, the Panel determined that Respondent had been properly served with the Statement of Claim and received due notice of the hearing, and that the arbitration in the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

One of the assigned arbitrators was unable to attend. Claimant consented during the proceeding to go forward with the two remaining arbitrators.

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 be and hereby is liable for and shall pay Claimant compensatory damages in the amount of \$77,896.4, plus 9% interest accruing from May 5, 2000 to payment of the Award;
2. Respondent be and hereby is liable for and shall pay Claimant Attorneys' fees in the amount of \$5,500, pursuant to the terms of the parties' promissory note dated August 6, 1997;
3. Respondent's Counterclaim is hereby denied; and
4. All other requests for relief are 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	= \$ 1,000.00
Counter 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, Paine Webber, Inc., is a party.

Member surcharge	= \$ 1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 2,500.00

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 Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference: July 9, 2001 1 session	
One (1) Hearing sessions x \$1,125.00	= \$1,125.00
Hearing Date: May 2, 2002 1 session	
Total Forum Fees	= \$2,250.00

The Panel has assessed the entire amount of the forum fees against Respondent.

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 1,000.00
<u>Member Fees</u>	= \$ 4,100.00
Total Fees	= \$ 5,100.00
<u>Less payments</u>	= \$ 5,850.00
Refund due Claimant	= \$ 750.00

2. Respondent be and hereby is solely liable for:

Counterclaim Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 2,250.00
Total Fees	= \$ 2,550.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 2,550.00

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

ARBITRATION PANEL

Robert L. Spangler	-	Industry Arbitrator, Presiding Chair
Paul J. Camilleri, Esq.	-	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.

Robert L. Spangler, Esq.
Industry Arbitrator, Presiding Chair

Signature Date

Paul J. Camilleri
Paul J. Camilleri, Esq.
~~Public Arbitrator~~

May 5, 2002
Signature Date

INDUSTRY

May 6, 2002

Date of Service (For NASD office use only)

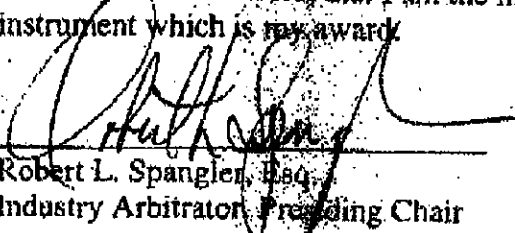
ARBITRATION PANEL

Robert L. Spangler
Paul J. Camilleri, Esq.

Industry Arbitrator, Presiding Chair
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.


Robert L. Spangler, Esq.
Industry Arbitrator, Presiding Chair

Signature Date

May 6, 2002

Paul J. Camilleri, Esq.
Public Arbitrator

Signature Date

Date of Service (For NASD office use only)