

**Final Order**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

PaineWebber, Inc., (Claimant) vs. Albert Rabizadeh, (Respondent) vs. Melinda Abood (Third Party Respondent)

Case Number: 01-00384

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant, PaineWebber, Inc., hereinafter referred to as "Claimant": Lisa A. Catalano, Esq., Davidson, Manchel and Brennan, LLP, Northvale, NJ (formerly associate with the Law Offices of Joel E. Davidson, Park Ridge, NJ).

Respondent, Albert Rabizadeh, hereinafter referred to as "Respondent": Michael S. Winokur, Attorney at Law, Rego Park, New York.

Third Party Respondent, Melinda Abood, hereinafter referred to as "Third Party Respondent": Lisa A. Catalano, Esq., Davidson, Manchel and Brennan, LLP, Northvale, NJ (formerly Law associate with the Law Offices of Joel E. Davidson, Park Ridge, NJ).

**CASE INFORMATION**

Statement of Claim filed on or about: January 23, 2001.

Claimant signed the Uniform Submission Agreement: December 18, 2000.

Third Party Respondent signed the Uniform Submission Agreement: June 19, 2001.

Answer to Counterclaim and Third Party Claim filed jointly by Claimant and Third-Party Respondent on or about: May 24, 2001.

Statement of Answer, Counterclaim and Third Party claim filed by Respondent on or about: April 19, 2001.

Respondent did not sign the Uniform Submission Agreement.

### **CASE SUMMARY**

Claimant asserted the following causes of action: repayment of unsecured debit balance resulting from liquidation of Respondent's account to meet a margin call; conversion; and breach of contract.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: assumption of the risk; contributory negligence; Claimant failed to apprise Respondent of the risks associated with excessive concentration of assets in one security; unsuitability; failure to supervise; breach of fiduciary duty by Claimant and Third Party Respondent; Claimant and Third Party Respondent failed to disclose to Respondent of the risks of excessive margin indebtedness; Claimant and Third Party Respondent failed to sell MRV Communications stock in a timely fashion when they discovered its margin deficit; failure to mitigate damages; Claimant's claims are barred by the doctrines of estoppel, waiver, and ratification; Claimant's claims are barred by the applicable statute of limitations.

In its Counterclaim and Third Party claim, Respondent asserted the following causes of action: control person liability; unsuitability; breach of fiduciary duty; fraud; failure to supervise; and churning.

Unless specifically admitted in its Answer to Respondent's Counterclaim and Third Party claim, Claimant and Third Party Respondent denied the allegations and asserted the following defenses: failure to state of cause of action upon which relief may be granted; Claimant and Third Party Respondent acted in compliance with all applicable rules and regulations and in good faith; damages allegedly suffered have no causal relationship with any act committed by Respondent or are legally attributable to Claimant or Third Party Respondent; Respondent's claims are barred by the doctrines of estoppel, ratification, affirmance; laches and waiver; any alleged injuries were caused in whole or in part by Respondent; Claimant properly supervised Third Party Respondent; Respondent's claim is barred by the applicable statutes of limitations; Respondent did not reasonably rely to his detriment upon any representation or action made by Claimant or Third Party Respondent; transactions complained of were duly authorized by Respondent; failure to mitigate damages; assumption of the risk; and Respondent controlled his account and is responsible for the losses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$76,690.87; reimbursement for all costs, fees and expenses of these proceedings, including attorneys' fees; and such other relief as the Panel deems just and equitable.

Claimant and Third Party Respondent requested dismissal of Respondent's counterclaim and third party claim in its entirety.

Respondent requested dismissal of Claimant's claims in their entirety; compensatory damages in the amount of \$780,000 on the counterclaim and third party claim; pre- and post-award interest at the maximum rate allowed by law accruing from the date of the original investment; and reimbursement for all costs, fees and expenses of these proceedings, including consulting fees, expert witness fees, and any other costs the Panel deems reasonable.

### **OTHER ISSUES CONSIDERED AND DECIDED**

By letter dated April 26, 2002, the parties were requested to advise as to the status of this matter no later than May 10, 2002. There were no responses to this request. After due consideration, the Panel decided that this case should be dismissed, without prejudice, due to lack of prosecution.

Respondent did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure and, having answered the claim, is 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.

### **DECISION**

After considering the pleadings and the lack of prosecution of this matter, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claim and Respondent's Counterclaim and Third Party claim are hereby dismissed without prejudice.
2. 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	= \$ 375.00

**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, Inc. is a party.

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

**Fee Summary**

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 1,000.00
<u>Member Fees</u>	<u>= \$ 1,600.00</u>
Total Fees	= \$ 2,600.00
<u>Less payments</u>	<u>= \$ 3,350.00</u>
Refund Due Claimant	= \$ 750.00

2. Respondent be and hereby is solely liable for:

<u>Counterclaim Filing Fee</u>	<u>= \$ 375.00</u>
Total Fees	= \$ 375.00
<u>Less payments</u>	<u>= \$ 1,575.00</u>
Refund Due Respondent	= \$ 1,200.00

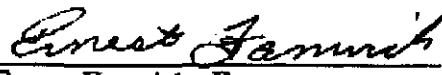
All balances are due and payable to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

Ernest Fanwick, Esq.	-	Public Arbitrator, Presiding Chair
Howard L. Mandell, Esq.	-	Public Arbitrator
Virginia Kali Sourlis, Esq.	-	Industry 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.

  
Ernest Fanwick, Esq.  
Public Arbitrator, Presiding Chair

7/10/2002  
Signature Date

Howard L. Mandell, Esq.  
Public Arbitrator

Signature Date

Virginia Kali Sourlis, Esq.  
Industry Arbitrator

Signature Date

July 16, 2002  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

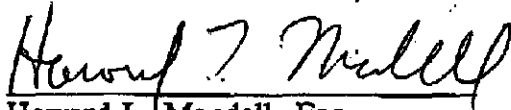
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Signature Date





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*Virginia Kali Sourlis*  
Virginia Kali Sourlis, Esq.  
Industry Arbitrator

\_\_\_\_\_  
7/8/02  
Signature Date

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July 16, 2002  
Date of Service (For NASD office use only)