

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

PaineWebber Incorporated, (Claimant) v. Otwell Warren O'Keefe, (Respondent), v. PaineWebber Incorporated (Counterclaim Respondent), Jody Thompson and Marcus Pelham-Webb (Third-Party Respondents)

Case Number: 01-00424

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant/Counterclaim Respondent, PaineWebber Incorporated ("PaineWebber"): Romaine L. Gardner, Esq., Staten Island, NY.

Respondent/Counterclaim Claimant, Otwell Warren O'Keefe ("O'Keefe"): George L. Mahr, Esq., George L. Mahr, P.C. Madison, NJ.

Third-Party Respondent, Jody Ethan Thompson ("Thompson"): Elliot Cohen, Esq., Jenkins & Gilchrist Parker Chapin LLP, New York, NY.

Third-Party Respondent, Marcus Pelham-Webb ("Marcus"): Romaine L. Gardner, Esq., Staten Island, NY.

CASE INFORMATION

Statement of Claim filed on or about: December 12, 2000.

PaineWebber signed the Uniform Submission Agreement: March 29, 2001.

Joint Answer to Counterclaim/Third Party Claim filed by PaineWebber, Jody and Marcus on or about: September 10, 2001.

Jody signed the Uniform Submission Agreement: October 23, 2001.

Marcus signed the Uniform Submission Agreement: October 29, 2001.

Statement of Answer and Counterclaim filed by O'Keefe on or about: June 20, 2001.

O'Keefe signed the Uniform Submission Agreement: June 8, 2001.

CASE SUMMARY

PaineWebber asserted the following causes of action: failure to pay; outstanding balance. PaineWebber's claim involved the stocks of ENZ Biochem Inc.

Unless specifically admitted in its Answer, O'Keefe denied the allegations of wrongdoing set forth in the Statement of Claim and asserted the following defenses: failure to timely sell shares of Enzo Biochem Inc.; failure to mitigate damages; PaineWebber, Thompson and Marcus fraudulently withheld money owed, misquoted transaction prices, traded without authorization, and over-charged for commissions; losses and damages were suffered in O'Keefe's account as a result of Thompson's mismanagement, miscalculations and misrepresentations during the period of approximately February through April, 2000; and Thompson was acting as PaineWebber's agent and registered representative with the responsibility of managing O'Keefe's account, and as a result of PaineWebber's failure to supervise, monitor and control Thompson, and their breach of fiduciary duty owed to O'Keefe, PaineWebber should be liable for the substantial losses suffered in the account.

In his Counterclaim/Third Party Claim, O'Keefe asserted the following causes of action: mismanagement; fraudulent conduct; breach of fiduciary duty; and misrepresentations.

Unless specifically admitted in their Answer, PaineWebber, Thompson and Marcus denied the allegations of wrongdoing set forth in the Counterclaim/Third Party Claim and asserted the following defenses: the claim fails to state a claim against PaineWebber, Thompson and Marcus; O'Keefe had full knowledge of all material facts concerning his account including the position held and the transactions made therein and, accordingly, is estopped from bringing the instant claims; O'Keefe receives account statements and trade confirmations advising him of the nature and status of his investments and accordingly, is barred by the doctrine of waiver, ratification, laches and estoppel from asserting the instant claims; upon information and belief, the funds in the account were, in fact, in whole or in part, funds of Zoller; the activity in the account was the result of decisions made by O'Keefe's agent and fiduciary, Zoller, who is responsible for these decisions; O'Keefe has failed to mitigate his damages; O'Keefe's losses were not the proximate result of any matters alleged against the PaineWebber, Thompson and Marcus; the losses of O'Keefe, a sophisticated investor, were caused in whole or in part, by his own conduct and/or the conduct of his authorized agent; O'Keefe assumed the risk of losses of which he now complains; O'Keefe is precluded from recovery since he expressly authorized, approved or consented to the transactions effectuated in his account; O'Keefe is not entitled to punitive damages as a matter of law; and O'Keefe is not entitled to attorneys' fees as a matter of law.

RELIEF REQUESTED

PaineWebber requested compensatory damages in the amount of \$22,463.56, arbitration fee, and interest from October 1, 2000 until the Award in the matter is paid.

O'Keefe requested dismissal of the Statement of Claim in its entirety, an award for filing fees, hearing session fees, costs paid to defend against PaineWebber's claim, reasonable attorneys fees and such other relief as the Arbitrators deem just and equitable.

In his Counterclaim/Third Party Claim, O'Keefe requested compensatory damages in the amount of \$500,000.00 against PaineWebber and Thompson and compensatory damages in the amount of \$16,817.09 against Marcus; together with punitive damages, reasonable attorneys' fees, interest, costs, expert fees and such further relief as the Arbitrators may deem just and equitable.

In their Answer, PaineWebber, Thompson and Marcus requested dismissal of the Counterclaim/Third Party Claim in its entirety, an award for the costs of this proceeding and such other and further relief as the panel may deem proper.

OTHER ISSUES CONSIDERED AND DECIDED

Prior to any hearing, the parties settled all the claims and entered into a Stipulation on December 4, 2002.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

On December 4, 2002, the parties entered into an agreement to present to the panel a Stipulated Award. Now, upon the agreement of the parties and the written stipulation, the panel enters this award granting the following relief:

1. The Panel recommends the expungement of all reference to the above captioned arbitration from Third Party Respondents Jody Thompson's and Marcus Pelham-Webb'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 Respondents Jody Thompson and Marcus Pelham-Webb must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.

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	= \$ 750.00
Counterclaim	= \$ 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(s) at the time of the events giving rise to the dispute. In this matter, the member firm PaineWebber Incorporated is a party.

Member Surcharge	= \$ 400.00
Pre-Hearing Process Fee	= \$ 600.00
Hearing Process Fee	= \$ 2,500.00
Total Member Fees	= \$ 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. Forum fees associated with these proceedings are:

(4) Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$ 4,800.00
Pre-hearing conferences:	
April 17, 2002	1 session
April 24, 2002	1 session
July 9, 2002	1 session
July 19, 2002	1 session

Total Forum Fees	= \$ 4,800.00
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1. The Panel has assessed \$1,200.00 of the forum fees against PaineWebber.
2. The Panel has assessed \$1,200.00 of the forum fees against O'Keefe.
3. The Panel has assessed \$1,200.00 of the forum fees against Thompson.
4. The Panel has assessed \$1,200.00 of the forum fees against Marcus.

Fee Summary

1. PaineWebber is solely liable for:

Initial Filing Fee	= \$ 750.00
Member Fees	= \$ 3,500.00
<u>Forum Fees</u>	<u>= \$ 1,200.00</u>
Total Fees	= \$ 5,450.00
<u>Less payments</u>	<u>= \$ 6,150.00</u>
Refund Due Claimant	= \$ 700.00

2. O'Keefe is solely liable for:

Counterclaim Filing Fee	= \$ 375.00
<u>Forum Fees</u>	<u>= \$ 1,200.00</u>
Total Fees	= \$ 1,575.00
<u>Less payments</u>	<u>= \$ 1,575.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Thompson is solely liable for:

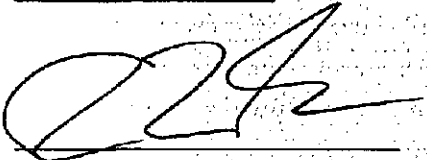
<u>Forum Fees</u>	<u>= \$ 1,200.00</u>
Total Fees	= \$ 1,200.00
<u>Less Payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 1,200.00

4. Marcus is solely liable for:

<u>Forum Fees</u>	<u>= \$ 1,200.00</u>
Total Fees	= \$ 1,200.00
<u>Less Payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 1,200.00

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

Parties' Signatures



Romaine L. Gardner, Esq.
Attorney for Claimant and
Third Party Respondent Marcus Pelham-Webb

2/19/03

Signature Date

George L. Mahr, Esq.
Attorney for Respondent


Signature Date

Elliot Cohen, Esq.
Attorney for Third Party Respondent
Jody Ethan Thompson

Signature Date

Parties' Signatures

Romaine L. Gardner, Esq.
Attorney for Claimant and
Third Party Respondent Marcus Pelham-Webb



George L. Mahr, Esq.
Attorney for Respondent

Signature Date

2/13/03

Signature Date

Elliot Cohen, Esq.
Attorney for Third Party Respondent
Jody Ethan Thompson

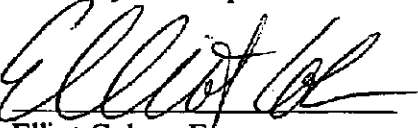
Signature Date

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Romaine L. Gardner, Esq.
Attorney for Claimant and
Third Party Respondent Marcus Pelham-Webb

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George L. Mahr, Esq.
Attorney for Respondent



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Attorney for Third Party Respondent
Jody Ethan Thompson

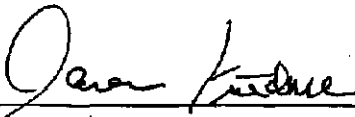
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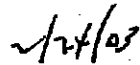
ARBITRATION PANEL

Aaron Friedman	-	Public Arbitrator, Presiding Chair
April D. Bowie	-	Public Arbitrator
Paul J. Camilleri, Esq.	-	Industry Arbitrator

Concurring Arbitrators' Signatures



Aaron Friedman
Public Arbitrator, Presiding Chair



Signature Date

April D. Bowie
Public Arbitrator

Signature Date

Paul J. Camilleri, Esq.
Industry Arbitrator

Signature Date

March 19, 2003

Date of Service (For NASD office use only)

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Aaron Friedman	-	Public Arbitrator, Presiding Chair
April D. Bowie	-	Public Arbitrator
Paul J. Camilleri, Esq.	-	Industry Arbitrator

Concurring Arbitrators' Signatures

Aaron Friedman
Public Arbitrator, Presiding Chair

Signature Date



April D. Bowie
Public Arbitrator

2/25/03

Signature Date

Paul J. Camilleri, Esq.
Industry Arbitrator

Signature Date

March 19, 2003

Date of Service (For NASD office use only)

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ARBITRATION PANEL

Aaron Friedman	-	Public Arbitrator, Presiding Chair
April D. Bowie	-	Public Arbitrator
Paul J. Camilleri, Esq.	-	Industry Arbitrator


Concurring Arbitrators' Signatures

Aaron Friedman
Public Arbitrator, Presiding Chair

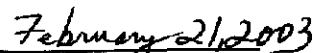
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April D. Bowie
Public Arbitrator

Signature Date



Paul J. Camilleri, Esq.
Industry Arbitrator



Signature Date

March 19, 2003
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