

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Scott M. Butler

Case No. 01-00763

Name of Respondent

PaineWebber, Inc.

REPRESENTATION OF PARTIES

For Scott M. Butler ("Butler"), hereinafter referred to as "Claimant": J. Pat Sadler, Esq. of Sadler & Hovdesven, P.C., Atlanta, Georgia.

For PaineWebber, Inc. ("PaineWebber"), hereinafter referred to as "Respondent": Michael D. Lee, Esq. of Schuyler, Roche & Zwirner, P.C., Chicago, Illinois.

CASE INFORMATION

Statement of Claim Seeking a Regular Injunctive Order and Permanent Relief filed on or about: February 14, 2001.

Claimant's Response to Respondents' Motion to Dismiss Statement of Claim filed on or about: March 1, 2001.

Claimant's Reply Brief to PaineWebber, Incorporated's Response to Claimant's Request for the Entry of a Regular Injunctive Order filed on about: March 1, 2001.

Cases and Statutory Citations Relied Upon by Claimant filed.

Claimant signed the Uniform Submission Agreement: February 14, 2001.

PaineWebber, Incorporated's Response to Claimant's Request for the Entry of a Regular Injunctive Order filed on or about: February 27, 2001.

Motion to Dismiss Statement of Claim filed on or about: February 27, 2001.

Appendix of Cases Relied Upon by PaineWebber in its Motion to Dismiss Statement of Claim filed.

Respondent signed the Uniform Submission Agreement: February 21, 2001.

Order executed by the Chairperson, Thomas M. Johnson, Jr., filed on or about: March 5, 2001.

CASE SUMMARY

Claimant asserted the following: Respondent should not be permitted to enforce certain

restrictive covenants in Claimant's employment contract with Respondent and said covenants should be declared void and unenforceable; Respondent should not be permitted to take any action to interfere with the transfer of Claimant's license should he leave PaineWebber for another brokerage firm; Respondent should be prohibited from taking any action to terminate, restrict, or otherwise materially alter Claimant's employment status as a result of the filing of this action; and, Respondent should have no claim to any proceeds paid to Claimant in connection with the sale of his J.C. Bradford & Co., LLC partnership interest.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: No actual controversy exists between PaineWebber and Claimant since Claimant has not resigned from his position as a PaineWebber broker and since PaineWebber has not engaged in any of the activities which Claimant seeks to enjoin; the Statement of Claim seeks an impermissible NASD-sanctioned advisory opinion as to the enforceability of certain restrictive covenants contained in the agreement Claimant signed in connection with the sale of his ownership interest in J.C. Bradford & Co., LLC to PaineWebber; and, Claimant's request for the issuance of a Regular Injunctive Order must be denied on the merits as well as on procedural and jurisdictional grounds.

RELIEF REQUESTED

Claimant requested that a single arbitrator issue a Regular Injunctive Order, enjoining PaineWebber from: seeking to enforce the restrictive covenants in Claimant's employment agreement should he leave the firm; taking any action to interfere with the transfer of Claimant's license should he leave PaineWebber for another brokerage firm; and, taking any action to terminate, restrict or otherwise materially alter Claimant's employment status as a result of the filing of this action. Further, Claimant requested that a full panel of arbitrators enter a permanent order declaring the restrictive covenants in Claimant's employment agreement to be void and unenforceable; enter a permanent order declaring that PaineWebber has no interest or claim to the proceeds received by Claimant from the sale of his partnership interest in J.C. Bradford & Co., LLC; and, such other and further relief as the panel deemed appropriate in the circumstances.

Respondent requested that the Panel dismiss Claimant's Statement of Claim, with prejudice; award PaineWebber its attorneys' fees and costs incurred in defending this matter; and, such other and further relief that the Panel deemed just and appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

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.

On or about March 5, 2001, the injunctive relief arbitrator, Thomas M. Johnson, Jr., issued an Order which referred to the full panel all issues before him, including Claimant's request for injunctive relief.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

The "non-compete clause" in Paragraph 7 B (1) of the Personal Employment Agreement is void and unenforceable.

The non-solicitation clause in Paragraph 7 B (3) of said agreement is void and unenforceable.

The non-solicitation clause in the Employee Forgivable Loan Agreement is void and unenforceable.

PaineWebber has no interest or claim to the proceeds received by Claimant from the sale of his partnership interest in J.C. Bradford & Co., LLC, but this does not include the Employee Forgivable Loan which is governed by its own terms.

All other requests for relief not specifically addressed herein are 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	= \$250.00
Injunctive relief surcharge	= \$2,500.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$1,200.00
Pre-hearing process fee	= \$600.00
Hearing process fee	= \$2,000.00

Adjournment Fees

Adjournments requested during these proceedings:

There were no adjournments requested during these proceedings.

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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One injunctive relief hearing session with a single arbitrator x \$450.00	= \$450.00
Injunctive relief hearing: March 2, 2001	1 session
One pre-hearing session with a single arbitrator x \$450.00	= \$450.00
Pre-hearing conference: March 30, 2001	1 session
One Pre-hearing session with Panel x \$1,000.00	= \$1,000.00
Pre-hearing conference: March 19, 2001	1 session
Four Hearing sessions x \$1,000.00	= <u>\$4,000.00</u>
Hearing Dates: April 3, 2001	<u>2 sessions</u>
April 4, 2001	<u>2 sessions</u>
Total Forum Fees	= \$5,900.00

The Panel has assessed \$2,950.00 of the forum fees to Claimant.
The Panel has assessed \$2,950.00 of the forum fees to Respondent.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$250.00
Injunctive Relief Surcharge	= \$2,500.00
Forum Fees	= \$2,950.00
Total Fees	= \$5,700.00
<u>Less payments</u>	<u>= \$4,000.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1,700.00

Respondent be and hereby is solely liable for:

Member Fees	= \$3,800.00
Forum Fees	= \$2,950.00
Total Fees	= \$6,750.00
<u>Less payments</u>	<u>= \$4,400.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$2,350.00

All balances are payable to NASD Dispute Resolution, Inc. and are due immediately upon receipt of the Award by the parties.

Concurring Arbitrators' Signatures

_____/s/_____
Thomas M. Johnson, Jr., Esq.
Industry Arbitrator, Presiding Chair

Signature Date

_____/s/_____
Barbara L. Guzman
Industry Arbitrator

Signature Date

_____/s/_____
Marshall H. Lichtenstein, Esq.
Industry Arbitrator

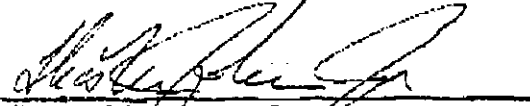
Signature Date

April 12, 2001
Date of Service (For NASD-DR office use only)

Attn - Jeff Wile

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Concurring Arbitrators' Signatures



Thomas M. Johnson, Jr., Esq.
Industry Arbitrator, Presiding Chair

4/11/01
Signature Date

Barbara L. Guzman
Industry Arbitrator

Signature Date

Marshall H. Lichtenstein, Esq.
Industry Arbitrator

Signature Date

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Industry Arbitrator, Presiding Chair

Signature Date

Barbara L. Guzman

Barbara L. Guzman
Industry Arbitrator

4-12-01

Signature Date

Marshall H. Lichtenstein, Esq.
Industry Arbitrator

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