

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between )  
 )  
PaineWebber, Inc., )-  
 ) Claimant, )  
 ) Case #86-01034  
vs. ) Award  
 )  
Hardee Land Co., Darroh Bros. Inc., )  
H.G., Larry & Jerry Darroh, )  
 )  
 )  
vs. )  
 )  
William Collard Jr. & Tracy J. Allen, )  
 )  
 ) Respondents. )  
 )  
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Heard before the members of the Arbitration Panel:

George Felos, Esq.  
Mr. Sam Giunta, Esq.  
Mr. Fred T. Rodgers  
Mr. Roger Robeson  
Mr. Terry G. Cleaves

CASE SUMMARY

This claim was filed with the NASD, Inc. on August 26, 1986. The hearings were conducted in Tampa, Florida on November 19, 1987, February 17 & 18, 1988, June 21 & 22, 1988, August 18, 1988, October 27 & 28, 1988, December 22 & 23, 1988, January 18 & 19, 1989, March 29 & 30, 1989, March 31, 1989 and June 1, 1989 with a total of 38 sessions.

Claimant, PaineWebber, Inc. ("PW") alleged that Respondents, Hardee Land Co. ("Hardee"), Darroh Bros., Inc. ("DBI"), H.G. Darroh ("H.G."), Larry Darroh ("L.D.") and Jerry Darroh ("J.D.") had debit balances in their respective commodity accounts had executed promissory notes in favor of Claimant wherein they acknowledged those debit balances; and that the Respondents had not made any payments pursuant to those promissory notes. Respondents alleged: failure of consideration for the promissory notes; fraud in the inducement to sign the notes; duress; estoppel and illegality. Respondents also asserted a counterclaim against PW and a third party claim against Respondents, William Collard Jr. ("Collard") the investment executive and Tracy Allen ("Allen") the PaineWebber Branch Manager in their Orlando office alleging: misrepresentation; omissions of material fact; churning; violations of Florida Statute 517; breach of fiduciary duty; breach of contract; negligence; common law fraud; and civil theft. Claimant and Third Party Respondents answered and alleged: that Respondents specifically requested the orders in their accounts; reliance on the representation that Respondents were hedgers; denied that any promises or guarantees were made to any of the Respondents; that Respondents were aware of the risks and were able to withstand the losses; and that Claimants and Third Party Respondents violated no rules, regulations or statutes.

## RELIEF REQUESTED

Claimant requested damages in the amount of One Hundred Six Thousand Six Hundred Eighty-One and 69/100 (\$106,681.69) Dollars plus interest, attorney's fees, costs and dismissal of the counterclaim and third party claim. Respondents in their counterclaim and third party claim requested damages in the amount of Four Hundred Thousand and 00/100 (\$400,000.00) Dollars plus interest, punitive damages, attorney's fees, costs and dismissal of the claim.

## AWARD

On the above referenced dates, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on August 25, 1986, and by Respondents Hardee Land Co., Darroh Bros., Inc., H.G. Darroh, Larry Darroh & Jerry Darroh on February 16, 1987; by Respondent, William Collard on January 7, 1987 and by Respondent, T.J. Allen on January 8, 1987. The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

1. 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. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD, Inc.
2. Respondents/Counter Claimants Hardee, DBI, H.G., L.D. and J.D. are hereby not liable to Claimant/Counter Respondent and all claims against them are hereby dismissed.
3. Claimant/Counter Respondent, PW and Third Party Respondents, Collard and Allen, hereby are liable, jointly and severally, and shall pay to Respondent/Counter Claimant L.D. the amount of One Hundred Nine Thousand Five Hundred Fifty-Three and 00/100 (\$109,553.00) Dollars inclusive of interest at the legal rate of 12% per annum.
4. Claimant/Counter Respondent, PW and Third Party Respondents, Collard and Allen, hereby are liable, jointly and severally, and shall pay to Respondent/Counter Claimant J.D. the amount of Forty Four Thousand Eight Hundred Fifty-Seven and 00/100 (\$44,857.00) Dollars inclusive of interest at the legal rate of 12% per annum.
5. Claimant/Counter Respondent, PW and Third Party Respondents, Collard and Allen, hereby are liable, jointly and severally, and shall pay to Respondent/Counter Claimant H.G. the amount of Eight Two Thousand Two Hundred Fifty-Three and 00/100 (\$82,253.00) Dollars inclusive of interest at the legal rate of 12% per annum.

6. Claimant/Counter Respondent, PW and Third Party Respondents, Collard and Allen, hereby are liable, jointly and severally, and shall pay to Respondent/Counter Claimant DBI the amount of Nine Thousand One Hundred One and 00/100 (\$9,101.00) Dollars inclusive of interest at the legal rate of 12% per annum.
7. Claimant/Counter Respondent, PW and Third Party Respondents, Collard and Allen, hereby are not liable to Respondent/Counter Claimant Hardee and therefore, the Counterclaim by Hardee against PW, Collard and Allen, is hereby dismissed.
8. Pursuant to Section 43 of the Code of Arbitration Procedure, the arbitrators have assessed forum fees in the amount of Twenty Eight Thousand Five Hundred and 00/100 (\$28,500.00) Dollars (\$750 x 38 sessions). Claimant, PW and Third Party Respondents Collard and Allen are hereby assessed forum fees in the amount of Fourteen Thousand Two Hundred Fifty and 00/100 (\$14,250.00) Dollars, for which they shall be jointly and severally liable. The Respondents/Counter Claimants, L.D., J.D., H.G., and DBI shall be and hereby are assessed forum fees in the amount of Fourteen Thousand Two Hundred Fifty and 00/100 (\$14,250.00) Dollars for which they shall be jointly and severally liable. The NASD, Inc. shall retain the Seven Hundred Fifty and 00/100 (\$750.00) Dollar filing fee previously deposited by the Claimant with the NASD, Inc. as partial satisfaction of, Claimant's portion of such forum fees.
9. The Claimant's/Counter Respondent's request for attorney's fees hereby is dismissed in all respects.
10. The Respondents'/Counter Claimants' Request for attorney's fees hereby is dismissed in all respects.
11. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

#### OTHER ISSUES

None.

#### ARBITRATORS CONCURRING

George Felos, Esq.  
Sam Giunta, Esq.  
Fred T. Rodgers  
Roger Robeson  
Terry G. Cleaves

Dated: August 8, 1989