

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of  
Securities Dealers, Inc.  
Suite 1680  
Three First National Plaza  
Chicago, IL 60602  
(312) 899-4440

In the Matter of the Arbitration Between

Richard M. Durwood

Claimant

PaineWebber, Inc.

88-01868

Respondent

Kent Kelley,

Third Party Respondent

CASE SUMMARY

In a claim filed with the NASD on or about June 8, 1988, Claimant Richard M. Durwood ("Claimant") alleged that Respondent PaineWebber, Inc. ("PaineWebber")'s employee Third Party Respondent Kent Kelley ("Kelley") represented that claimant could earn very substantial amounts of income by investing in stock market index options using a system that he developed. Claimant alleged that Kelley failed to inform Claimant that he was not following the system. Claimant also alleged that Kelley failed to execute an order to sell ten calls of Walt Disney stock prior to December 31, 1987.

In its Answer filed with the NASD on or about October 4, 1988 and in its Amended Statement of Answer and Statement of Third Party Claim filed with the NASD on or about August 8, 1989, PaineWebber denied that it failed to follow Claimants trading instructions. PaineWebber asserted the affirmative defenses that it should not be held liable for hypothetical profits on fictitious trades, the doctrines of estoppel, ratification, waiver, laches and failure to mitigate damages. In its Third Party Claim against Kelley, PaineWebber alleged that any damages which may have been suffered by Claimant were caused solely by the acts or omissions of Kelley.

In his answer to the third party claim filed with the NASD on or about August 23, 1989, Kelley denied the allegations of PaineWebber and asserted the affirmative defenses that the third party claim failed to state a claim upon which relief may be granted; the claim is barred by the statutes of limitations, the doctrines of ratification, assumption of the risk, waiver, estoppel, laches, contributory negligence and failure to mitigate damages.

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RELIEF REQUESTED

Claimant requested an award of \$19,192.87 in compensation for losses sustained in option trading; \$35,445.00 as the gain his account would have realized had Kelley strictly followed the system of stock market index options purchasing, unspecified damages for the failure to execute the sell order for Walt Disney stock options; interest; attorneys fees and unspecified punitive damages.

Respondent requested that the Statement of claim be dismissed and that costs reasonable attorneys fees be assessed against Claimant. In its Third Party Claim, PaineWebber requested contribution from Kent Kelley.

Third Party Respondent Kelley requested Kelley requested that the Third Party Claim be dismissed and that he be awarded attorneys' fees, costs and expenses.

AWARD

On Wednesday, August 15, 1990 and Thursday, August 16, 1990 in Kansas City, Missouri during a hearing lasting four (4) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on June 23, 1988 by Claimant Richard M. Durwood, by Respondent PaineWebber, Inc. did not file a submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure and having answered the claim, filed a third party claim, appeared at the hearing and having presented its defense is bound by the determination of the panel on all issues presented. Third Party respondent Kent Kelley did not file a submission to arbitration but is required to submit to arbitration pursuant to Sections 8 and 12 of the NASD Code of Arbitration Procedure and having answered the Third Party Claim, appeared at the hearing and having presented his defense and testified is bound by the determination of the panel on all issues presented.

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim shall be and hereby is dismissed and denied in its entirety;
2. The Third Party Claim shall be and hereby is dismissed and denied in its entirety;
3. Each party shall bear its own costs and expenses incurred in this matter including attorneys fees not specifically enumerated herein; and

Arbitration

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4. Pursuant to Section 43 (c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain as forum fees, the \$500.00 filing fee previously deposited with the NASD by the Claimant Richard M. Durwood. Claimant is assessed and shall pay to the NASD as additional forum fees the sum of \$1,500.00.

Arbitrator(s) Signature

Dated: 8-16-90

/S/ Bernard D. Craig, Jr. Esq.

Dated: 8-16-90

/S/ Michael William Gear

Dated: 8-16-90

/S/ Frances R. De Caro

Date Served: 8-21-90