

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

MAUREEN W. DURWOOD
Claimant

88-01873

and

PAINWEBBER, INC.
Respondent and Third Party Claimant

and

KENT KELLEY
Third Party Respondent

CASE SUMMARY

In a claim filed with the NASD on or about June 8, 1988, Claimant Maureen W. Durwood ("Claimant") alleged that Respondent PaineWebber, Inc. ("PaineWebber") and Kent C. Kelley ("Kelley") had made material misrepresentations regarding a system of investing in stock index options. Claimant alleged that Respondent Kelley had stated that he would strictly adhere to the system but he did not do so thereby breaching his promise to adhere to the trading system.

In its answer filed with the NASD on or about October 3, 1988 and its amended answer and third party claim filed with the NASD on or about August 8, 1989, Respondent PaineWebber stated that it did not make any representations to claimant and denied that it failed to follow any prearranged trading system. PaineWebber asserted the affirmative defenses that claimant is requesting damages which result from a hypothetical transaction; that it should not be held liable for claims for nonexistent profits from fictitious transactions; the doctrines of waiver, ratification, laches and failure to mitigate damages. PaineWebber asserted a third party claim against Third Party Respondent Kelley seeking indemnification.

In his answer to Third Party Claim filed with the NASD on or about August 22, 1989 and his amended statement of answer filed with the NASD on or about September 4, 1989, Third Party Respondent Kelley denied the allegations and asserted the affirmative defenses that the Third Party Claim fails to state any claim upon which relief may be granted, statutes of limitations, the doctrines of ratification, assumption of the risk, waiver, estoppel and laches.

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RELIEF REQUESTED

Claimant requested an award in the amount of \$73,777.68; interest; attorneys fees and unspecified punitive damages.

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

Third Party Respondent Kelley requested that the Third Party Claim be dismissed and costs and attorneys fees be assessed.

AWARD

On Monday, August 13, 1990 and Tuesday, August 14, 1990 in Kansas City, Missouri during a hearing lasting a total of five (5) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on June 23, 1988 by Claimant Maureen W. Durwood. Respondent PaineWebber did not file a submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration, and having answered the claim, filed as 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. Claimant Maureen W. Durwood shall be and hereby is liable for and shall pay to Respondent PaineWebber, Inc. the sum of One Thousand Dollars (\$1,000.00) as attorneys fees;

Arbitration

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4. Claimant Maureen W. Durwood shall be and hereby is liable for and shall pay to Third Party Respondent Kent Kelley the sum of One Thousand Dollars (\$1,000.00) as attorneys fees; and

5. 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 Maureen W. Durwood. Claimant is further assessed and shall pay to the NASD as additional forum fees the sum of Two Thousand Dollars (\$2,000.00).

By the Panel

Dated: 8-14-90

/S/ Mark D. Wasserstrom, Esq.

Dated: 8-14-90

/S/ William L. Beedles

Dated: 8-14-90

/S/ James Gasal

Date Served: 8-21-90