

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between )  
 )  
 Name of Claimant(s) )  
 )  
 Frederick J. Keitel, III )  
 )  
 )  
 Name of Respondent(s) )  
 )  
 PaineWebber, Inc. )  
 James Simcoke )  
 John Thurston )  
 Russ Brown )

89-02393

Heard before the members of the Arbitration Panel:

Casey W. Mills, Esq.  
Elizabeth L. Clark  
Anthony S. Paetro, Esq.

CASE SUMMARY

This claim was filed with the NASD, Inc. on August 25, 1989. The hearing was conducted in Fort Lauderdale, Florida on August 20 and 21, and September 4, 1990 with a total of seven (7) sessions.

Claimant, Frederick J. Keitel, III ("Keitel"), alleged that Respondents, PaineWebber, Inc. ("PW"), James Simcoke ("Simcoke"), John Thurston ("Thurston"), and Russ Brown ("Brown"), hired Claimant as an account executive; failed to timely cancel an order for OTC stocks in Keitel's personal account; encouraged Keitel, and other account executives, to sell insurance products although they were not licensed or registered to do so; that Simcoke and Thurston requested Keitel to pursue a customer's interest on insurance promising to divert the commissions to Keitel through Thurston; that Keitel did not sell the insurance or receive a commission; that Respondents sent a defamatory letter to Nellie Luckner; that the Form U-5 constituted a defamatory statement to Josephthal & Co.; that Respondents made fraudulent misrepresentations and acted willfully, wantonly and maliciously; that Respondents' actions constituted violation of Section 517.301, Florida Statutes; negligence by PW; defamation by PW, Simcoke and Brown; defamation by PW, Simcoke and Thurston; intentional and unjustified interference with an advantageous business relationship; and, intentional infliction of emotional distress.

Respondents denied all allegations of wrongdoing, alleged that Keitel did not perform as an account executive to build a client base, but traded principally in his own and his mother's accounts; that Keitel committed compliance violations by attempting to sell insurance without a license; and alleged that affirmative defenses of failure to state a claim; damages caused solely, or contributed to, by Claimant's negligence, recklessness or wrongdoing; assumption of risks; estoppel; authorization; ratification; waiver; good faith and due diligence; and, that the alleged defamatory statements were true.

#### RELIEF REQUESTED

Claimant requested damages in the amount of \$13,000.00, interest, punitive damages in the amount of \$200,000.00, attorney's fees pursuant to Section 57.105, Florida Statutes, and costs for Counts I and II; damages in the amount of \$39,000.00 for Counts III, IV and V; damages in the amount of \$100,000.00 for Count VI; and, correction of the U-5.

Respondents requested dismissal, attorney's fees and costs.

#### AWARD

On August 20 and 21 and September 4, 1990, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on August 24, 1989, and by Respondents Simcoe and Thurston on September 26, 1989, by PW on November 14, 1989, and by Brown on December 6, 1990. 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, Simcoe, Thurston and Brown, are found not liable to the Claimant and, therefore, all claims against them are hereby dismissed.
3. Respondent, PW, is found liable and shall pay to Claimant the amount of Twenty Two Thousand Three Hundred Forty Nine and 00/100 (\$22,349.00) Dollars inclusive of interest.
4. Respondent, PW, is further ordered to amend the termination section of Keitel's Form U-5 to state: "permitted to resign."
5. Claimant's requests for attorney's fees, punitive damages and costs are denied.

6. Respondents' requests for attorney's fees and costs are denied:
7. Pursuant to Section 43 of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of Five Thousand Two Hundred Fifty and 00/100 (\$5,250.00) Dollars. Claimant is hereby assessed forum fees in the amount of Two Thousand Six Hundred Twenty Five and 00/100 (\$2,625.00) Dollars, for which the NASD shall retain the Seven Hundred Fifty and 00/100 (\$750.00) Dollar filing fee in partial satisfaction thereof. Respondent, PW, is hereby assessed forum fees in the amount of Two Thousand Six Hundred Twenty Five and 00/100 (\$2,625.00) Dollars payable to the National Association of Securities Dealers, Inc.
8. Pursuant to Section 30(b) of the Code, the NASD shall refund (credit) the One Hundred and 00/100 (\$100.00) Dollar postponement fee to Claimant for the postponement request which was withdrawn.
9. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

#### OTHER ISSUES

None.

#### ARBITRATORS CONCURRING

Anthony S. Pastro, Esq. and Elizabeth L. Clark

#### ARBITRATOR DISSENTING

The undersigned arbitrator hereby dissents only to that portion of this Award found in paragraph 3 which finds liability and assesses damages against PW, and hereby concurs in the remainder of this Award.

Casey W. Mills, Esq.

Received this 4th day of October 1990.