

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :
PaineWebber, Inc. :
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 Claimant :
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 vs. :
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 James E. Smith :
 :
 :
 Respondent :

CASE #91-01088
AWARD

CASE SUMMARY

PaineWebber, Inc. by its counsel Garry J. Stegeland, Weehawken, NJ, in a claim filed with the National Association of Securities Dealers, Inc. on April 8, 1991, alleged that Respondent James E. Smith has failed to pay a debit balance in his customer account. Claimant confirms that Mr. Smith's account was erroneously credited for a Variable Annuity Life Insurance Product and Respondent converted said credit to a Cashfund and withdrew the funds. When Claimant reversed the credit, the account was left with a debit balance.

Respondent, James E. Smith failed to Answer the original service of the Statement of Claim sent to him on April 9, 1991. The claim was reserved on Mr. Smith on July 18, 1991 and returned as "unclaimed" following three attempts at service by the postal service. The Claim was reserved on James E. Smith by regular mail on August 19, 1991. That service was not returned. James E. Smith failed to Answer the Statement of Claim.

RELIEF REQUESTED

Claimant requests damages of Three Thousand One Hundred Eighty-Two Dollars and Fifteen Cents (\$3,182.15) plus interest at the rate of ten percent (10%) per annum from November 6, 1989, attorney's fees and return of the NASD fees.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Arnold O. Flicker, Esq., was selected to review

and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on April 2, 1991 and not by the Respondent as required by his customer agreement and by Section 13(d) of the Code of Arbitration Procedure;

And, that the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. That the Respondent James E. Smith is liable and shall pay to the Claimant PaineWebber, Inc. the sum of Three Thousand One Hundred Eighty-Two Dollars and Fifteen Cents (\$3,182.15) plus interest at the rate of ten percent (10%) per annum from November 6, 1989 until payment of this award.
2. That Respondent is liable and shall pay to the Claimant Three Hundred Eighteen Dollars and Twenty-One Cents (\$318.21) in attorney's fees.
3. The Five Hundred Seventy-Five Dollar (\$575) filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. and is assessed against James E. Smith who shall pay to the Claimant PaineWebber, Inc. the sum of Five Hundred Seventy-Five Dollars (\$575).

AFFIRMATION

I, **ARNOLD O. FLICKER, ESQ.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATED: *Oct 4, 1991*

Dated by the NASD, Inc.: October 9, 1991