

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

PaineWebber, Incorporated

91-01127

Name of Respondent

Anthony Lee

REPRESENTATION

For Claimant: Brigitta K. Siegel, Esq.

For Respondent: Francis X. Stone, Esq.

CASE INFORMATION

Statement of Claim filed: April 10, 1991.

Claimant's Motion to Bar Unasserted Defenses filed: September 19, 1991.

Claimant's Submission Agreement signed on: April 3, 1991.

The Respondent did not sign a Submission Agreement as required pursuant to Section 25 of the Code of Arbitration Procedure.

Statement of Answer filed by Respondent Anthony Lee on: January 24, 1992.

HEARING INFORMATION

Hearing Dates/Sessions: March 13, 1992, 1 Session
 February 27, 1992, 1 Session
 September 23, 1991, 1 Session

Hearing Location: NASD offices located in New York City, NY.

CASE SUMMARY

Claimant alleged that in connection with Respondent's employment at PaineWebber, Inc., on or about May 15, 1990 PaineWebber, Inc.

advanced the Respondent the sum of \$42,400.00 and he signed a promissory note to PaineWebber, Inc. in that amount. Claimant further, alleged Respondent's employment with PaineWebber, Inc. was terminated prior to his first anniversary of employment; therefore, in accordance with the terms of the Note no amounts were forgiven on the Note and the entire amount remains due and owing to the Claimant. Claimant submitted a Motion to Bar Unasserted Defenses for Respondent's failure to comply with any of the rules of the Code of Arbitration Procedure.

Respondent maintained PaineWebber, Inc.'s action to refuse "cold calling" support was a breach of contract by PaineWebber, Inc. which in effect acted as a termination of Respondent without cause and PaineWebber, Inc. chose to ignore the oral contract between its agent, Dan Scalzi and Respondent; therefore, Claimant forfeited its right to collect the outstanding amount on the Note and the Respondent asserted a counterclaim as Claimant alleges that Claimant is liable for deceitful misrepresentations made by its agent and for Claimant's breach of contract further requested that punitive damages be awarded to the Respondent.

RELIEF REQUESTED

Claimant requested: damages of \$42,400.00 plus interest, together with attorneys' fees and costs as expressly provided for in the Note and that their Motion to Bar Unasserted Defenses be granted and the Respondent's counterclaim be dismissed.

Respondent requested: dismissal of the claims against the Respondent and judgment in the Respondent's favor with regard to his counterclaim for misrepresentation/deceit in the sum of \$78,000.00 actual damages plus punitive damages in the sum of \$320,000.00 plus attorneys' fees costs and interest and requested judgment in Respondents favor on his counterclaim for breach of contract in the sum of \$78,000.00 plus attorneys' fees, costs and interest.

AWARD


After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

The attached consent Award executed by the parties is incorporated and made part of this award.

ARBITRATION PANEL

Name

Public/Industry



John J. O'Neill, Esq.

Industry



Victor F. Alvarez

Industry



Katherine Nathan, Esq.

Industry

Date of Decision: October 23, 1992

STATE OF:

New York

SS:

COUNTY OF:

New York

On this 21st day of October, 1992, before me personally appeared KATHERINE NATHAN, ESQ. known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that she executed the same.

Maureen K. Corrao

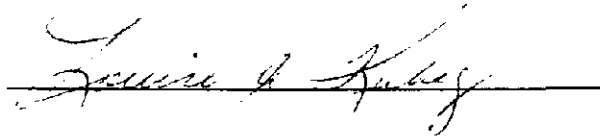
MAUREEN K. CORRAO
Notary Public, State of New York
No. 43 4757410
Qualified in Richmond County
Commission Expires February 28, 1993

STATE OF: *South Carolina* ~~New York~~

SS:

COUNTY OF: *Darlington* ~~New York~~

On this *14th* day of *October*, 1992, before me personally appeared VICTOR F. ALVAREZ known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



MY COMMISSION EXPIRES JANUARY 14, 2001

STATE OF:

New York .

ss:

COUNTY OF:

New York

On this 24th day of September, 1992, before me personally appeared JOHN J. O'NEILL known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Susan J. Unger

SUSAN J. UNGER
NOTARY PUBLIC, State of New York
No. 4971387
Qualified in Nassau County
Commission Expires September 4, 1994

NATIONAL ASSOCIATION OF SECURITIES, DEALERS, INC.

In the Matter of the Arbitration Between

PAINEWEBBER INCORPORATED

Claimant,

vs.

ANTHONY LEE

Respondent

NASD NO. 91-01127

CONSENT AWARD

In the above referenced matter, PaineWebber brought a Claim in arbitration for the amount of \$42,400.00, plus interest and costs, against Respondent Anthony Lee. Respondent did not file an Answer initially, however, ultimately retained counsel and did submit an Answer and counterclaim in the matter.

A second hearing was scheduled to occur on a number of occasions, most recently for March 13, 1992. Counsel for both Claimant and Respondent, as well as all parties were present for the hearing.

Prior to commencement of the second hearing, the parties through the respective counsel agreed to settle this matter, under terms of Respondent dismissing with prejudice all counterclaims and agreeing to pay the sum of \$30,000.00 to PaineWebber. The first lump sum payment of \$5,000.00 shall be delivered to PaineWebber on or before March 31, 1992. Thereafter, Respondent shall remit on a monthly basis the sum of \$1,500.00 payable to PaineWebber Incorporated, until the remainder of the settlement amount plus 9% interest is fully paid. Payments are due at the first of each month and shall

be mailed by Respondent to the attention of Mark Taylor, National Collections Department, PaineWebber Incorporated, 1200 Lincoln Harbor, 5th Floor, Weehawken, N.J. 07087.

Respondent further agrees that should he default under the terms of the Settlement Agreement, a final award for the full sum of \$42,400.00, plus interest and cost, less any payments which may have been made.

The parties have further agreed that the Panel shall execute this Consent Award and in so doing, shall either retain jurisdiction or authorize other arbitrators of the NASD to execute an amended award should the Respondent default under the terms of the Agreement.

The parties agreed to the terms of the settlement and this Consent toward on the record before the arbitrators in this case. Neither party has relied on a representation except as set forth in the Settlement Agreement and the Consent Award. Further, no modification shall be made to the terms in the Settlement between the parties except in writing through the parties directly or their respective attorneys in fact.

Dated:

Anthony Lee

Dated:

6/19/92

Samuel J. [Signature], Asst. General Counsel
U.P. P.W. Inc.

Dated:
