

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

David Baerwalde

and

92-02054

Name of Respondent

PaineWebber, Inc.

REPRESENTATION OF PARTIES

David Baerwalde ("Claimant") was represented by Bradley K. Glazier, Esq. of Buchanan & Bos, Grand Rapids, MI.

PaineWebber, Inc. ("Respondent") was represented by Jennifer A. Connors, Attorney at Law, of PaineWebber, Inc., Weehawken, NJ.

CASE INFORMATION

The Statement of Claim was filed on or about June 19, 1992. Submission Agreement of Claimant was signed on June 2, 1992.

Statement of Answer was filed by Respondent on or about July 31, 1992. Submission Agreement of Respondent was signed on July 30, 1992 by Timothy A. Baker.

HEARING INFORMATION

The hearing was held on February 25, 1993 for two (2) sessions February 26, 1993 for two (2) sessions in Southfield, Michigan, June 22, 1993 for two (2) sessions, September 29, 1993 for two (2) sessions and September 30, 1993 for two (2) sessions in Grand Rapids, Michigan for a total of ten (10) sessions.

CASE SUMMARY

Claimant alleged that he was defamed by Respondent as a result of Respondent filing a form U-5 and an Amended Form U-5 which contained false statements about the reasons for his termination.

Respondent stated that the statements on the U-5 were an accurate and true recounting of the facts regarding the reported instances. It was stated that the language used was a result of consultations with the Claimant and the Claimant's supervisor at the branch. Respondents further stated that the subsequent amendments to the form U-5 were the result of additional customer complaints. A failure to report the complaints would have resulted in disciplinary action against the firm.

RELIEF REQUESTED

Claimant requested an award in the amount of \$15,750 and an order that PaineWebber submit a corrected U-5 deleting the misstatements of fact alleged. Claimant also requested an award of attorneys' fees and costs.

Respondent requested that the claims asserted in this matter be dismissed in their entirety and that it be awarded its costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

Any outstanding motions for summary judgment or motions to dismiss are **denied**.

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains on file with the NASD

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. No monetary damages are awarded herein.
2. Respondent PaineWebber, Inc. shall file an Amended U-5 form deleting all comments and references to any person other than Jeannene M. Jacques and Caroline S. Prottegeier as reflected on the original U-5 dated November 19, 1991.
3. Each party shall bear its own costs, expenses and fees including attorneys' fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$300 per hearing session and \$300 for each prehearing conference, if any. There were ten (10) sessions x \$300 = \$3,000 in forum fees. Pursuant to

§44(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §44(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$500 and shall retain as forum fees the hearing session deposit in the amount of \$300 previously deposited with the NASD by the Claimant leaving a balance due of \$2,700 for forum fees. Respondent shall pay to the NASD the sum of \$2,700 as forum fees. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

s/ Harold I. Gach, Esq.

Harold I. Gach, Esq.

Industry Arbitrator, Presiding Chair

July 15, 1994