

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

PaineWebber, Inc.

Consolidated cases

92-02956 and 92-02957

Name of Respondents

Robert M. Racusen (92-02956)

Mark Karambelas (92-02957)

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REPRESENTATION

For Claimant, PaineWebber, Inc. at the hearing: Tom Mierswa, Esq. of PaineWebber, Inc., Weehawken, New Jersey and Martin Hookstra, Esq. of PaineWebber, Inc., Chicago, Illinois.

For Respondents, Robert Racusen and Mark Karambelas at the hearing: Richard Orlikoff, Esq. of Flamm & Teibloom, Ltd., Chicago, Illinois.

CASE INFORMATION

Arbitration Case Number 92-02956

Statement of Claim filed against Robert Racusen on: September 1, 1992.  
Statement of Answer to Respondent's Counterclaim filed: January 25, 1993.  
Claimant's Submission Agreement signed on: August 31, 1992.

Statement of Answer and Counterclaim filed by Respondent, Robert Racusen on: October 5, 1992. Respondent, Robert Racusen's Submission Agreement signed on: October 1, 1992.

Arbitration Case Number 92-02957

Statement of Claim filed against Mark Karambelas on: September 1, 1992.  
Statement of Answer to Respondent's Counterclaim filed on: January 25, 1993.  
Claimant's Submission Agreement signed on: October 1, 1992.

Statement of Answer and Counterclaim filed by Respondent, Mark Karambelas on: October 5, 1992. Respondent, Mark Karambelas's Submission Agreement signed on: October 1, 1992.

### **HEARING INFORMATION**

Hearing Dates/Sessions: November 17, 1993 for two (2) sessions.  
November 18, 1993 for two (2) sessions.

Hearing Location: Chicago, Illinois.

### **CASE SUMMARY**

Claimant PaineWebber, Inc. ("PW") alleged in separate filings with the NASD which were later consolidated, that Respondents Robert Racusen ("Racusen") and Mark Karambelas ("Karambelas") failed to pay the amount owed on their promissory notes after voluntarily resigning from employment with PW.

Respondent Racusen, along with Respondent Mark Karambelas denied that they owed money to PW and alleged that PW owes money to them as set forth in their Counterclaim. In their Counterclaim, Racusen and Karambelas alleged that PW breached its representation and promise to permit Racusen and Karambelas to handle sales of securities by Resolution Trust Corporation which was assured during their employment interviews. Racusen and Karambelas alleged that as a result, they were deprived of commissions and their "back-end bonus."

Claimant/Counter-Respondent PW denied that they made any misrepresentations or promises to Racusen and Karambelas as to the terms of their employment with PaineWebber, or breached any alleged contract between PW or Racusen and Karambelas.

### **RELIEF REQUESTED**

Claimant PaineWebber, Inc. requested awards in its favor against Respondents Robert Racusen and Mark Karambelas each in the amount of \$39,636.00, plus interest, together with attorneys' fees and costs, as provided for in the Promissory Note.

Respondents Racusen and Karambelas requested damages in excess of \$100,000.00 for lost commissions.

### **OTHER ISSUES CONSIDERED & DECIDED**

The request to consolidate arbitration case number 92-02956 with arbitration case number 92-02957 by counsel for Respondents was granted pursuant to Section 25(d) of the NASD Code of Arbitration Procedure.

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.

### **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:

1. The Claimant, PaineWebber, Inc.'s Statement of Claim is denied and dismissed;
2. Each of the parties shall bear their own costs and expenses, including attorney's fees, other than those specifically set forth below under Forum Fees;

### **Counterclaim**

3. Claimant/CounterRespondent, PaineWebber, Inc. shall be and hereby is liable for, and shall pay to the Respondents/CounterClaimants, Robert Racusen and Mark Karambelas, damages in the amount of Seventy Thousand Dollars (\$70,000.00) to be divided as follows:

- a. \$35,000.00 to Robert Racusen,
- b. \$35,000.00 to Mark Karambelas.

### **FORUM FEES**

Pursuant to Section 44c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

4 sessions X \$600 = \$2400 minus hearing session deposit of \$600 = net \$1800 due.

The panel determined to have each party share equally in the forum fees. (\$1200 for the Claimant and \$600 for each of the Respondents). The forum fees are assessed as follows:

**Claimant, PaineWebber, Inc.:** The NASD shall retain the nonrefundable filing fees in the amounts of \$500 which were previously deposited by the Claimant for arbitration case numbers 92-02956 and 92-02957. The NASD shall

also retain the hearing session deposits in the amounts of \$600 which were previously deposited with the NASD for arbitration case numbers 92-02956 and 92-02957. No additional amounts are due from PaineWebber, Inc.

**Respondent, Robert Racusen:** The NASD shall retain the nonrefundable filing fee in the amount of \$500 which was previously deposited with the NASD for the counterclaim. The NASD shall also retain the hearing session deposit for the counterclaim in the amount of \$600 for his share of the additional forum fees which were assessed by the panel. No additional amounts are due from Robert Racusen.

**Respondent, Mark Karambelas:** The NASD shall retain the amount of \$225 which was previously deposited with the NASD when filing the counterclaim. Mark Karambelas shall pay to the NASD the amount of \$875 which represents the nonrefundable filing fee for the counterclaim in the amount of \$500 and his share of the additional hearing session fees assessed by the panel in the amount of \$600 minus the \$225 which was previously deposited with the NASD. Mark Karambelas shall pay the amount of \$875 to the NASD.

Additional fees assessed by the panel are payable to the National Association of Securities Dealers, Inc.

**By The Arbitration Panel:**

**Dated:**

1-13-94

s/s Kevin J. Conway, Esq.  
Kevin J. Conway, Esq.  
Presiding, Industry Arbitrator

1-11-94

s/s Scott Goldsher, Esq.  
Scott Goldsher, Esq.  
Industry Arbitrator

1-13-94

s/s Dan Foley  
Dan Foley  
Industry Arbitrator

**Date Award Served By The NASD:** 1-24-94