

N.A.S.D. FINAL ORDER

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

John Denes

92-03563

Name of Respondent

PaineWebber, Incorporated

REPRESENTATION

For Claimant: Richard A. Meier, Esq. a sole practitioner.

For Respondent: Nanette L. Korpi, Esq. of Haliw, Siciliano and Mychalowych.

CASE INFORMATION

Statement of Claim filed: November 23, 1993.

Claimant's Submission Agreement signed on: September 29, 1992.

Statement of Answer and Motion to Dismiss filed by Respondent, PaineWebber, Incorporated on: March 8, 1993.

Respondent, PaineWebber, Incorporated's Submission Agreement signed on: March 5, 1993.

HEARING INFORMATION

Pre-Hearing Conference: Septebmer 30, 1993.

Pre-Hearing Conference Location: American Arbitration Association - Southfield, MI.

CASE SUMMARY

Claimant alleges that he was employed by Respondent, PaineWebber ("PW") as an Account Executive from October 1988 through March 1989. Claimant alleges that he was a valuable asset to the Respondent and fulfilled all the terms and conditions of his employment.

Claimant alleges that after his termination in March 1989, PW knowingly communicated false information about his performance on his Form U-5. Claimant alleges that the Respondent communicated

that he "deliberately misrepresented a prospective client's financial status to various creditors and financial institutions on behalf of the prospective client". Claimant alleges that this statement is false, and was known to be false at the time PW made it. Claimant alleges that Respondent also implied that he was investigated by the FBI and that that implication was false.

Claimant alleges that the actions of PW were intentional, willful and malicious and that as a result, Claimant suffered humiliation, embarrassment, mental distress, anxiety, loss of community esteem, loss of reputation and loss of wages.

Respondent denies that the Claimant was a valuable asset to PW since the Claimant engaged in conduct which was contrary to firm policy and regulatory standards of conduct. Respondent maintained that the Claimant deliberately misrepresented a "prospective" client's financial status to various creditors. Respondent denies that it communicated false information regarding Claimant's performance of his professional duties, since, based on interviews with the FBI, Respondent had reasonable grounds to believe that the Claimant misrepresented a prospective client's financial status. Respondent denies that it implied in writing that the Claimant was investigated by the FBI.

RELIEF REQUESTED

Claimant requested damages in the amount of \$500,000.00 for lost wages, lost benefits, loss of self esteem and loss of reputation.

Respondent requested that the statement of claim be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

Respondent filed a Motion to Dismiss stating that the Claimant originally filed this matter in the United States Federal Court for the Eastern District of Michigan. Respondent asserts that the only claim set forth by the Claimant was a common law claim for slander. Respondents allege that the first U-5 was dated April 3, 1989 and an amended U-5 was dated June 13, 1989 so that Claimant's claim for slander accrued on April 3, 1989, the date of publication of the alleged slander.

Respondent asserts that Michigan law provides for a one year statute of limitations for slander claims, so that the statute expired on April 3, 1990. Respondents assert that the Claimant did not file the matter in Federal Court until December 1991. Respondents assert that the arbitrators may directly apply Michigan statutes of limitations in determining if claims for arbitration are time-barred. Respondents further assert that Section 15 of the

NASD Code of Arbitration Procedure has a six year eligibility requirement, but that Section 15 also provides that it does not extend applicable statutes of limitation.

Claimant, in response to the Respondent's Motion states that an agreement to arbitrate is a contractual provision between the parties and that courts of law enforce these arbitration rules and procedures under contract law provisions. Claimant maintains that both the Claimant and Respondent agreed to be bound by the NASD Code of Arbitration Procedure which states in Section 15 that "no dispute, claim or controversy shall be eligible for submission to arbitration where six years have elapsed from the occurrence or event giving rise to the act of dispute".

Claimant maintains that the NASD agreement contains an explicit agreement as to when a demand for arbitration must be made, therefore the panel must look to Section 15 to determine if the Claimant's claim was timely filed. Claimant argues that the Claim was filed within the six years.

Claimant argues that the panel should not apply Michigan statutes of limitation in the matter since the parties have already contractually agreed that Section 15 will apply.

A majority of the panel granted Respondent's Motion to Dismiss Claimant's slander allegations, based on statutes of limitation on October 4, 1993.

Claimant moved that the Claim proceed on the counts of misrepresentation and/or breach of contract, either as stated in the claim, or through an amended statement of claim. The panel requested written briefs on this issue.

Claimant asserted that he identified two contested issues in his submission statement, whether a breach of contract existed and whether a claim of misrepresentation was presented. Claimant further argued that if the submission statement could not be interpreted to encompass all contested issues, then he should be given the opportunity to amend his submission statement to properly reflect the contested issues. Claimant asserts that a motion to amend should ordinarily be granted when no undue prejudice to the opposing part can be demonstrated. Claimant further argued that the Respondent had not undergone any discovery preparing for the arbitration.

Respondent asserts that the Claimant's statement of claim alleges that PaineWebber communicated false information regarding his performance and goes on to allege that the statement is untrue and was known to be false when made. Respondent argues that Count I of Claimant's statement of claim is labeled as a claim for slander.

Respondent argues that they have examined Claimant's statement of claim and have been unable to find any language setting forth claims for misrepresentation or breach of contract. Respondent asserts that the arbitration panel has granted Respondent's Motion to Dismiss Claimant's slander allegation based upon the statute of limitations.

ORDER

After considering the written arguments of the parties, the undersigned arbitrators have decided that the Claimant's request to proceed on the claims of misrepresentation and/or breach of contract is hereby denied without prejudice.

FORUM FEES

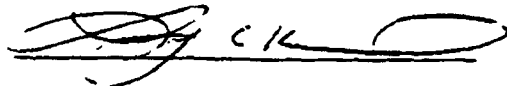
Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

\$500.00	Non-refundable filing fee
\$750.00	Hearing session deposit
\$300.00	Pre-hearing conference fee

- 1) The NASD shall retain the non-refundable filing fee and hearing session deposit previously paid by the Claimant.
- 2) The pre-hearing conference fee of \$300.00 is hereby assessed equally between the Claimant and Respondent. Therefore, Claimant is assessed the amount of \$150.00 and shall pay this amount to the NASD, Inc. Respondent is also assessed the amount of \$150.00 and shall pay this amount to the NASD, Inc.

Concurring Arbitrator's Signature
Larry C. Kreul

Industry Arbitrator



Executed on:

~~Date of Decision:~~

1/17/94

Date of Decision: January 19, 1994

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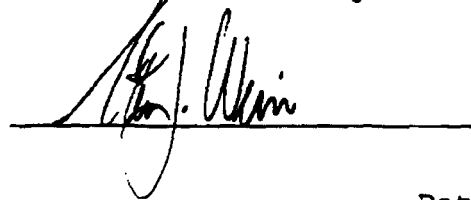
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Concurring Arbitrator's Signature
Steve J. Weiss, Esq.



Industry Chairperson

Date of Decision: January 19, 1994

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Concurring Arbitrator's Signature
Rose C. Ruble

Industry Arbitrator

Rose C. Ruble

Executed on:
~~Date of Decision:~~ 1/12/94

Date of Decision: January 19, 1994