

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

---

In the Matter of the Arbitration Between

Name of Claimant:

Paragon Capital Corp.

92-03713

Names of Respondents:

David L. Weintraub  
Lew Lieberbaum & Co., Inc.  
Brian Clendenin  
Jay Israel  
Leonard Neuhaus

---

**REPRESENTATION**

For Claimant, Paragon Capital Corp. ("Paragon"): David S. Smith, Esq., of Smith Campbell & Paduano, New York, New York.

For Respondent, David L. Weintraub ("Weintraub"): Lori A. Brown, Esq., of Rumberger, Kirk & Caldwell, Tampa, Florida.

For Respondents, Lew Lieberbaum & Co., Inc. ("Lew Lieberbaum"), Brian Clendenin ("Clendenin"), Jay Israel ("Israel") and Leonard Neuhaus ("Neuhaus"): Jay Mark Israel, Esq. of Lew Lieberbaum & Co., Inc., Garden City, New York.

**CASE INFORMATION**

Statement of Claim filed: 11/2/92.

Claimant's Submission Agreement signed on: 12/1/92.

Statement of Answer filed by Respondent, Weintraub on: 12/27/93.

Respondent, Weintraub's Submission Agreement signed on:

A Joint Statement of Answer of Lew Lieberbaum, Clendenin, Israel and Neuhaus was filed on: 3/3/93.

Page 2

Award-#92-03713

Respondent, Lew Lieberbaum's Submission Agreement and Corporate Acknowledgment was signed on: 3/3/93.

Respondent, Clendenin's Submission Agreement was signed on: 3/25/93.

Respondent, Israel's Submission Agreement was signed on: 3/25/93.

Respondent, Neuhaus' Submission Agreement was signed on: 3/25/93.

### **HEARING INFORMATION**

Hearing Date/Sessions: 4/14/94-Three (3) sessions.

Hearing Location: Fort Lauderdale, Florida.

### **CASE SUMMARY**

Claimant alleged that in connection with his employment as a producing manager in Paragon's Tampa office, Respondent, Weintraub received a lump sum payment of \$50,000 from Paragon for which Weintraub signed a promissory note ("note") dated May 28, 1992. Claimant stated that the note obligated Weintraub to repay the \$50,000 under various specified circumstances, including termination of his employment within 12 months of the date of the note. Claimant alleged that prior to employing Weintraub and paying him the \$50,000 Paragon insisted upon reviewing Weintraub's current Form U-4 to determine whether he had a disciplinary history or other compliance problems and that Weintraub provided paragon with a false U-4 which contained no "yes" answers to questions 22H-L and that Weintraub orally represented to Paragon that the U-4 was truthful. Claimant alleged that only after employing Weintraub and paying him \$50,000 did it learn that the form U-4 was false because Weintraub was the subject of numerous past and current customer complaints among other problems. Claimant alleged that under those circumstances, Paragon terminated Weintraub's employment on July 16, 1992. Claimant further alleged that in accordance with industry practice, upon hiring Weintraub, Paragon inquired of his former employer, Respondent, Lew Lieberbaum, whether Weintraub had any previous disciplinary or compliance problems and that both Respondents, Clendenin and Neuhaus, failed to disclose the existence of investigations by both the NASD and the State of Florida concerning customer complaints even though Lew Lieberbaum had received written notice from both agencies of their investigations prior to Paragon's inquiry. Paragon alleged that Lew Lieberbaum filed an amended Form U-5 on July 7, 1992, several weeks after paragon had paid Weintraub the \$50,000. Claimant alleged that Respondents violated Article III, Section 1 of the NASD Rules of Fair Practice as well as Article IV, Sections 2(a) (3) and 3 of the NASD By-laws.

Respondent, Weintraub, denied all allegations of wrongdoing contained in the Statement of Claim and maintained that the contract entered into by Weintraub and Paragon was for the purchase of equipment and stated that Paragon is asking essentially, that the Panel accept its post-contractual interpretation of its contract with Weintraub which directly contradicts that this was an agreement secured by equipment valued by Paragon's president as exceeding the value of the Note.

Respondents, Lew Lieberbaum, Clendenin, Israel and Neuhaus, denied all allegations of wrongdoing contained in the Statement of Claim and denied any responsibility in Weintraub causing Paragon to file with the NASD a Form U-4 application containing misrepresentations and omissions of fact. These Respondents maintained that Weintraub and not them possessed the privileged information and had the obligation to disclose such information to Paragon. These Respondents maintained that Paragon's loss is due to Paragon's own errors, poor judgment of character and lack of due diligence and that Paragon was negligent in not attempting to stop payment of check(s) when potential problems arose.

#### **RELIEF REQUESTED**

Claimant requested an award of damages in the amount of \$50,000 plus punitive damages of \$25,000 and the costs and attorneys' fees of this proceeding.

Respondent, Weintraub, requested dismissal of the Claim.

Respondents, Lew Lieberbaum, Clendenin, Israel and Neuhaus, requested dismissal of the Claim and that all costs be assessed against Paragon.

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

1. Respondent, Israel, was voluntarily dismissed, with prejudice, by Claimant at the hearing.
2. The panel denied Respondent, Weintraub's Motion to Dismiss at the hearing.

#### **AWARD**

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

1. All Respondents, Weintraub, Lew Lieberbaum, Clendenin and Neuhaus, are found jointly and severally liable and shall pay to Claimant the sum of Twenty Five Thousand Dollars (\$25,000).
2. Claimant's Claims for punitive damages, attorneys' fees and costs are hereby denied.
3. All other Claims are hereby denied.

#### **OTHER COSTS**

1. The parties shall each bear their own costs and expenses incurred in connection with this proceeding, including attorneys' fees.

#### **FORUM FEES**

Pursuant to Section 44c of the Code of Arbitration Procedure, the Panel has assessed Forum Fees in the amount of \$1,800 (three (3) hearing sessions X \$600.

1. Claimant is hereby assessed forum fees in the amount of \$600 for which the NASD shall retain the \$600 previously deposited in full satisfaction thereof.
2. Respondents, Weintraub, Lew Lieberbaum, Clendenin and Neuhaus, are hereby assessed, jointly and severally, forum fees in the amount of \$1,200 payable to the NASD, Inc.

Fees are payable to the National Association of Securities Dealers, Inc.

#### **ARBITRATION PANEL**

##### **Concurring Arbitrators' Signatures**

/s/

\_\_\_\_\_  
Harold D. Powell, Jr., Esq.

Industry/Chairman

/s/

\_\_\_\_\_  
Richard D. Toplin

Industry/Panelist

/s/

\_\_\_\_\_  
Edward S. Burstein

Industry/Panelist

Date of Decision: May 31, 1994