

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant

PAINEWEBBER, INC.

NASD Arbitration
No. 92-04145

v.

Name of Respondent

JAMES R. FLICKINGER

REPRESENTATION

For Claimant: Catherine Pratt, Esq. - PaineWebber, Inc., Los Angeles, California

For Respondent: Richard S. Bayer, Esq. - San Diego, California

CASE INFORMATION

Statement of Claim filed: December 8, 1992

Claimant's Answer to Respondent's Counterclaim filed: March 22, 1993

Claimant's Submission Agreement signed: December 2, 1992

Statement of Answer and Counterclaim filed by Respondent: March 1, 1993

Respondent's Submission Agreement signed: January 28, 1993

HEARING INFORMATION

Pre-Hearing Conference Date / Session: November 9, 1993 - One Session

Hearing Dates / Sessions:

- February 10, 1994 - Two Sessions
- February 11, 1994 - Two Sessions
- February 14, 1994 - Two Sessions
- February 16, 1994 - Two Sessions

Hearing Location: San Diego, California

CASE SUMMARY

Claimant, Painewebber, Inc., sought indemnification in the amount of \$157,485.44, representing the settlement amount paid by Painewebber to five customers (eight accounts) of Respondent, James R. Flickinger. The underlying lawsuits were brought against Painewebber and alleged fraud, breach of fiduciary duty, failure to supervise, lack of suitability, and misrepresentations and omissions involving the purchase of Painewebber Growth Partners Three Limited Partnership. The combined settlement provided for dismissal of the lawsuits and assignment to Painewebber of rights to the causes of action against Respondent.

Respondent denied liability on the basis that he was not named as a party in the customers' lawsuits. Respondent's counter-claim alleged that the customers' losses were caused by Painewebber and others.

RELIEF REQUESTED

Claimant sought \$157,485.44 as described above, interest and costs.

Respondent sought compensatory damages based upon an annual \$51,130.00 in delayed compensation, \$5,000,000.00 in punitive damages, \$1,000,000.00 damages for U-5 related libel, and an order to amend and remove U-5 allegations of fraud and misrepresentation.

OTHER ISSUES CONSIDERED AND DECIDED

At the hearing, Claimant sought to amend its claim to add three additional customers representing settlement amounts of \$46,000.00. The amendment was denied by the panel.

The parties have agreed that the Award in this matter may be executed in either 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 original remains 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. Respondent, James R. Flickinger, is liable for and shall pay to Claimant, Painewebber, Inc., the sum of Fifteen Thousand Dollars and No Cents (\$15,000.00).
2. Item 7 of Respondent's U-5 states as follows: "Claimants alleged fraud, breach of fiduciary duty and negligent misrepresentation involving PW Growth Partners, L.

P. and sought damages totaling \$214,000 plus punitive damages." Claimant is ordered to add the following sentence - "The registered representative was not named in the actions."

3. All counterclaims of Respondent are dismissed
4. The parties shall each bear their respective costs and fees.

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the following forum fees are assessed:

One Pre-hearing Session:	\$300.00
Eight regular hearing sessions:	\$6,000.00 (\$750.00 X 8)
Total Fees Assessed:	\$6,300.00

- (a) Claimant is assessed 90% of the total fees, less credit for \$750.00 previously deposited for a total of \$4,920.00.
- (b) Respondent is assessed 10% of the fees assessed in the amount of \$630.00.

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

ARBITRATORS

Name

Ronald V. Johnston
Diana G. Davis
James F. Schmidt

Public / Industry

Industry Arbitrator
Industry Arbitrator
Industry Arbitrator

Concurring Arbitrators' Signatures

Ronald V. Johnston

Diana G. Davis


James F. Schmidt

Date of Decision: _____