

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

In the matter of the Arbitration Between

**Name of Claimant(s)**

PaineWebber Incorporated

NASD Arbitration

No. 92-04233

**Name of Respondent(s)**

David Batu

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**REPRESENTATION**

For Claimant: Scott M. Ratchick, Esq., Hunton & Williams, Atlanta, Georgia

For Respondent: David Batu, Hillsboro, Oregon

**CASE INFORMATION**

Statement of Claim filed: December 4, 1992

PaineWebber's Response to Statement of Setoff and Counterclaim filed: February 18, 1994

Claimant's Submission Agreement signed: December 15, 1992

Statement of Answer, Setoff and Counterclaim filed by Respondent: February 25, 1993

Amended Answer, Setoff and Counterclaim filed by Respondent: January 14, 1994

Respondent's Submission Agreement signed: March 16, 1993

**HEARING INFORMATION**

Pre-Hearing Conference Date(s)/Session(s):

April 27, 1994 (one session)

October 14, 1994 (one session)

Hearing Date(s)/Session(s): November 2, 1994 (three sessions)

Hearing Location: Portland, Oregon

#### CASE SUMMARY

PaineWebber Incorporated (PaineWebber) alleged that Respondent David Batu (Butu) breached the terms and conditions of his promissory note (Note) executed on or about August 12, 1991.

Respondent Batu alleged that he has earned one-third of his \$110,192.00 signing bonus, and all of his \$60,000.00 incentive bonus. Mr. Batu denied any liability with respect to the Note, alleged misrepresentations with respect to his employment with PaineWebber, alleged that he was involuntarily terminated without cause and alleged misrepresentations with respect to the U-5 form prepared by PaineWebber. Mr. Batu further alleged that he is entitled to thirty days of additional compensation for PaineWebber's willful failure to pay him compensation due pursuant to Oregon Revised Statutes 652.150, alleged that he was never paid the \$60,000.00 he earned as an incentive bonus, nor was he reimbursed improper tax withholdings from his signing bonus and alleged that he is entitled to his reasonable attorney's fees pursuant to ORS 652.200. Mr. Batu further alleged that he is entitled to compensatory damages as a result of the dishonest and deceptive representations made to him in order to induce him to leave his job in Philadelphia, move across the country to Portland, and become employed by PaineWebber in violation of ORS 659.210 and further alleged that he is entitled to reasonable attorney's fees pursuant to ORS 659.220.

PaineWebber generally and specifically denied each and every allegation of wrongdoing and liability asserted by Mr. Batu in his counterclaim and request for a setoff against the claim for damages originally filed in this action by PaineWebber.

#### RELIEF REQUESTED

PaineWebber requested:

1. Damages against Mr. Batu and in favor of PaineWebber in the amount of \$82,644.00, plus interest, costs and expenses, including reasonable attorney's fees, filing fees and other incurred disbursements, as provided for by the terms of the Note;
2. Dismissal of Mr. Batu's counterclaim and claim for setoff in their entirety, with prejudice; and
3. For all further relief that the arbitration panel deems just and proper.

Respondent Batu requested:

1. Declaring the Note unenforceable, or reforming same to reflect the agreement of the parties or declaring same not due or payable;
2. Awarding or offsetting the amount due under the Note by any and all withholdings improperly attributable to or taken from bonus or salary payments to Mr. Batu;
3. Awarding or offsetting against any award in favor of PaineWebber, the additional sums of \$60,000.00 incentive bonus, \$50,000.00 lost earnings due to the U-5 misrepresentation and \$75,000.00 in losses and moving expenses due to the employment contract misrepresentation;
4. Requiring PaineWebber to pay thirty days of additional compensation, as well as Mr. Batu's costs and reasonable attorney's fees, along with prejudgment interest on all awards in favor of Mr. Batu; and
5. For all such further relief as is equitable.

#### OTHER ISSUES CONSIDERED AND DECIDED

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 originals remain on file with the National Association of Securities Dealers, Inc. (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. All claims by PaineWebber Incorporated are dismissed.

2. With respect to the Statement of Setoff and Counterclaim, PaineWebber Incorporated is liable for and shall pay to David Batu the sum of \$65,000.00, representing the 10% bonus he was due on his first year's earnings, which at the time of his discharge were about \$630,000.00 and no doubt would have gone to \$650,000.00 over the next month. In addition, PaineWebber Incorporated is liable for and shall pay to David Batu the sum of \$10,000.00 for defamation, because of PaineWebber's filing of the U-5 form, which caused Mr. Batu's termination from his successor employer. PaineWebber Incorporated is further liable for and shall pay to David Batu the sum of \$7,000.00 as reimbursement for Mr. Batu's attorney fee expenses pursuant to ORS 20.096 and 20.097.

3. The parties shall each bear their respective costs of this proceeding.

#### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall retain the \$600.00 hearing session deposit previously deposited by PaineWebber Incorporated and shall retain the \$600.00 hearing session deposit previously deposited by David Batu as costs of this proceeding.

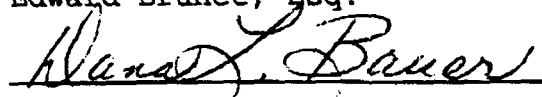
#### ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Martin E. Henner, Esq.	Public Arbitrator
Edward Brunet, Esq.	Public Arbitrator
Dana L. Bauer	Industry Arbitrator

#### Concurring Arbitrators' Signatures

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Martin E. Henner, Esq.

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Edward Brunet, Esq.

  
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Dana L. Bauer

Date of Decision: 12/12/94