

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

PaineWebber, Inc.

and

93-00641

Name of Respondent

Fred E. Hoffman

REPRESENTATION OF PARTIES

PaineWebber, Inc. ("**Claimant**") was represented by Joseph A. Vallo, Esq. of PaineWebber, Inc., Weehawken, NJ.

Fred E. Hoffman ("**Respondent**") was represented by J. William Holland, Esq. of Holland & Holland, Chicago, IL.

CASE INFORMATION

The Statement of Claim was filed on or about February 22, 1993. Amendment to the Statement of Claim was filed on or about April 28, 1993. Reply to the counterclaim asserted by Respondent was filed on or about July 12, 1993. Submission Agreement of Claimant was signed on February 17, 1993 by Joseph F. Generelli.

Statement of Answer and Counterclaim was filed by Respondent on or about April 22, 1993. Submission Agreement of Respondent was signed on May 11, 1993.

HEARING INFORMATION

Pre-hearing conferences were held on October 22, 1993 for one (1) session and October 27, 1993 for one (1) session with Perry L. Taylor, Jr., Esq. presiding.

The hearing was held on Wednesday, December 1, 1993 in Chicago, Illinois for a total of three (3) sessions.

CASE SUMMARY

Claimant alleged that Respondent executed a promissory note which provided for forgiveness in four equal annual installments. Claimant alleged that Respondent was terminated for failure to comply with company policy prior to the forgiveness of the note and therefore owes Claimant on the note. Claimant further alleged that the Respondent had a draw deficit in the amount of \$30,959.86. In addition to the above allegations, Claimant submitted an amendment to the Statement of Claim which alleged that the Respondent owed it an additional \$4,148.00 for chargebacks on two PaineWebber Syndicate trades. In its Reply to the Counterclaim, Claimant denied all allegations of wrongful termination and stated that the allegations were an attempt to offset any monies owed to it.

Respondent stated that Claimant violated its undertakings with him by failing to make him the sales manager of the Oak Brook office; failing to have his largest account serviced by the Syndicate Department; and wrongfully charging back commissions.

RELIEF REQUESTED

Claimant requested an award in the amount of \$230,632.20 plus interest, that the costs of this proceeding be assessed against the Respondent, that the claims asserted in the Counterclaim be dismissed and for such other and further relief as the panel may deem just and proper.

Respondent requested that the claim made by Claimant be dismissed and that he be awarded his reasonable attorney's fees and an award in the amount of \$60,750.00 together with interest, costs, and expenses.

OTHER ISSUES CONSIDERED & DECIDED

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 original(s) remain on file with the N.A.S.D.

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 Fred E. Hoffman shall be and hereby is liable for and shall pay to the Claimant PaineWebber, Inc. the sum of *Thirty five thousand one hundred seven dollars and eighty six cents* (\$35,107.86).

2. Interest is awarded on the above stated sum at the rate of 3% per annum from and inclusive of January 14, 1993 to and inclusive of the date this award is paid in full.
3. The counterclaim asserted in this matter shall be and hereby is dismissed and denied in its entirety.
4. Each party shall bear its own costs, expenses and attorney's fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Pursuant to §44(c) of the N.A.S.D. Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("N.A.S.D.") shall retain the non-refundable filing fee in the amount of \$500.00 and shall retain as forum fees the hearing session deposit in the amount of \$600.00 previously deposited with the N.A.S.D. by the Claimant. Claimant shall pay to the N.A.S.D. the sum of \$450.00 and Respondent shall pay to the N.A.S.D. the sum of \$1,050.00 as forum fees.

Forum fees are calculated at the rate of \$600.00 per hearing session and \$300.00 for each prehearing conference, if any. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

s/ Perry L. Taylor, Jr., Esq.
Perry L. Taylor, Jr., Esq.
Industry Arbitrator, Presiding Chair

December 1, 1993

s/ Sanford J. Prizant
Sanford J. Prizant
Industry Arbitrator

December 1, 1993

s/ Richard J. Kosarek
Richard J. Kosarek
Industry Arbitrator

December 1, 1993