

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

PaineWebber Incorporated

MODIFIED AWARD

93-01387

Name of Respondent

Joel Krinsky dba J&J Investments

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on April 7, 1993, Claimant PaineWebber Incorporated, by and through their in-house counsel Garry J. Stegeland, Esq., alleged that on or about December 8, 1992 Respondent Joel Krinsky dba J&J Investments opened an account with Claimant under the name of J&J Investments and signed a Client's Agreement. Claimant further alleged that in connection with the opening of this account, on or about December 8, 1992, Respondent completed the Business New Account Form, listing himself, Joel Krinsky, as the sole Principal Officer, being the President, and indicating Respondent Joel Krinsky as the authorized person to enter orders for J&J Investments. Claimant contended that under the Client's Agreement, Respondent agreed that "I shall at all times be liable for the payment of any amounts advanced, any debit balance or other obligations owing in any of my account(s) in the event of the liquidation thereof, in whole or in part, by you or by me. I shall make payment of any such debit balance, obligation, deficiency, indebtedness, including interest and commission, upon demand and any costs of collection, including attorney's fees if incurred by you". Claimant further contended that on trade date December 8, 1992 for settlement date December 15, 1992, Respondent purchased, unsolicited, 3,000 shares of Anacomp Inc. and 2,000 shares of Sulcus Computer Corp. in Respondent's account. Claimant asserted that under the Client's Agreement, Respondent agreed that "all reports of execution of orders and account statements shall be conclusive if not objected by me in writing immediately by notice sent to you by registered mail." Claimant further asserted that Respondent failed to pay for these unsolicited, authorized purchases, thereby forcing Claimant, on trade date December 23, 1992 for settlement date December 31, 1992, to liquidate the 3,000 shares of Anacomp Inc. and the 2,000 shares of Sulcus Computer Corp., resulting in the debit in the amount of \$3,976.59 in Respondent's account. Claimant further alleged that attempts to resolve

this matter amicably were unsuccessful and Claimant, therefore, wrote Respondent a demand letter on January 27, 1993, sent via certified mail with return receipt requested, in which Claimant demanded repayment of Respondent's debt and informed the Respondent of Claimant's intent to arbitrate if said payment was not made. Claimant further contended that to date, Respondent has made no payment and the account continues to have an unsecured debit balance in the amount of \$3,976.59.

Respondent Joel Krinsky dba J&J Investments failed to file an Answer to the Statement of Claim.

### **RELIEF REQUESTED**

Claimant PaineWebber, Incorporated requested the sum of \$3,976.59 in actual damages plus interest at the rate of 10% per annum from December of 1992 until payment of the award, together with reasonable attorneys' fees in the amount of \$397.65, and the NASD filing fees of \$575.00.

Respondent Joel Krinsky dba J&J Investments failed to file an Answer to the Statement of Claim.

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

In accordance with Section 13 of the NASD Code of Arbitration Procedure, the Respondent Joel Krinsky dba J&J Investments was served a copy of the Statement of Claim by regular mail on April 23, 1993 and given an opportunity to respond, which he failed to do. The Respondent Joel Krinsky dba J&J Investment was notified on August 9, 1993, via certified mail, that his Statement of Answer was overdue. The certified mail was returned to the NASD, "unclaimed". This correspondence was re-sent regular mail and was not returned. Respondent Joel Krinsky dba J&J Investments was notified on August 26, 1993, via certified mail, of the selected arbitrator pursuant to Section 21 of the NASD Code of Arbitration Procedure. The certified mail was returned to the NASD, "unclaimed". Respondent Joel Krinsky dba J&J Investments was notified on October 18, 1993, via certified mail, that his Statement of Answer was overdue. The Respondent Joel Krinsky dba J&J Investments was notified on November 1, 1993, via certified mail, that his Statement of Answer was overdue. The certified mail receipt was returned to the NASD, "unclaimed". This correspondence was re-sent regular mail and was not returned.

Respondent Joel Krinsky dba J&J Investments failed to file an Answer to the Statement of Claim.

Pursuant to the By-Laws of the NASD the arbitrator determined that Respondent Joel Krinsky dba J&J Investments was required to submit to this arbitration proceeding and is, therefore, bound by the arbitrator's ruling and determination.

**AWARD**

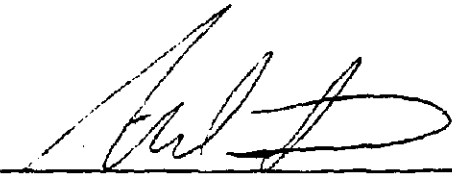
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Mark J. Gianno, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on April 1, 1993 and on January 14, 1994, and not signed by the Respondent as required by Sections 12 & 13 of the NASD Code of Arbitration Procedure.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Joel Krinsky dba J&J Investments is liable and shall pay to the Claimant PaineWebber Incorporated the sum of \$3,016.22 in actual damages.
2. Respondent Joel Krinsky dba J&J Investments is liable and shall pay to the Claimant PaineWebber Incorporated simple interest at the rate of 6% per annum from December 8, 1992 to the date of payment of the award.
3. Respondent Joel Krinsky dba J&J Investments is liable and shall pay to the Claimant PaineWebber Incorporated the sum of \$397.65, representing attorney's fees.
4. The \$575.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant PaineWebber Incorporated shall be retained by the NASD, Inc. Respondent Joel Krinsky dba J&J Investments is liable and shall pay to the Claimant the sum of \$575.00, as reimbursement.

AFFIRMATION

I, MARK J. GIANNO, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

A handwritten signature in dark ink, appearing to read 'Mark J. Gianno', is written over a horizontal line.

Signature of Arbitrator

DATE OF DECISION:      January 28, 1994