

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Frank Ibarra

Case No. 93-01571

Name of Respondent(s)

PaineWebber, Inc.

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**REPRESENTATION**

For Claimant, Frank Ibarra, ("Ibarra"): Mark Dienstag, Esq. of Brenner & Dienstag, P.A. of Fort Lauderdale, Florida.

For Respondent, PaineWebber, Inc. ("PW"): Melanie Cherdack, Esq. of PW, Miami, Florida.

**CASE INFORMATION**

Statement of Claim filed: April 20, 1993. Claimant's Submission Agreement signed: April 13, 1993.

Respondent Statement of Answer filed: August 5, 1993. Respondent's Submission Agreement signed: August 3, 1993 by Patricia E. Cowart on behalf of PW.

**HEARING INFORMATION**

On May 12 and 13, 1994, in Fort Lauderdale, Florida, hearings lasting 4 sessions were conducted.

**CASE SUMMARY**

Claimants alleged that Respondent PW, his former employer, is liable for a finder's fee in relation to a transaction involving in excess of \$300,000,000.00 worth of bonds transactions; that Claimant was the finder of Orlando Cruz, who is head of the Dade County Aviation Department, and that he; Claimant, set up

meetings with Mr. Cruz and PW investment bankers; that he subsequently followed up and assisted an associate of the head of the Dade County Finance Committee in an unrelated matter to solidify the relationship; that eventually PW acted as lead manager to two Airport Bond issues, the value of which was in excess of \$150,000,000.00 and acted as co-manager in at least one other Bond issue, the value of which was \$55,000,000.00; that there was breach of contract by Respondent, and particularly implied contract and Quantum Meruit arising from his relationship with PW; that industry standards start finders fees at about 20% and PW's stated policy pays finders starting at 15% of the total net gain realized upon the transaction; and, that PW was enriched by Claimant's efforts.

Respondent denied all allegations of wrongdoing and alleged that Ibarra sought a finder's fee for Dade County Aviation Department bond deals; that Ibarra asserted that notwithstanding PW's written policy providing that no fee would be paid to a person who is no longer employed by the company, that in "fairness and equity" he should be paid a fee; that the Statement of Claim sought damages of \$514,349.95, but at the hearing the Claimant reduced the Claim to a range of \$55,000-\$212,000; and that PW denied that Claimant was entitled to a fee. Not only was Claimant no longer an employee at the time the deals closed (and thus barred by explicit written policies from receiving a fee), but PW argued that Claimant brought no "added value" to the deal; and, even assuming that Claimant was entitled to a finder's fee, PW's position was that the fee should be more than \$4,390-\$6,585 (10%-15% of the net management fee as provided in the PW policies for municipal securities deals).

#### **RELIEF REQUESTED**

Claimant requested a finder fee in the amount of \$514,397.95, reduced at hearing to \$55,000.00 to \$215,000.00; interest and costs.

Respondents requested dismissal, costs, limitation of damages to no more than \$4,390.00 to \$6,585.00, and attorney's fees.

#### **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 NASD.

#### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is found not liable and, therefore, all claims against it are hereby dismissed.
2. Claimant's request for costs is denied.
3. Respondent's requests for attorney's fees and costs are denied.

#### OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

#### FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$4,000.00 (4 sessions x \$1,000.00).

1. Claimant is hereby assessed \$2,000.00 for which the NASD shall retain the \$1,000.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$1,000.00 payable to the National Association of Securities Dealers, Inc.
2. Respondent is hereby assessed \$2,000.00 payable to the National Association of Securities Dealers, Inc.
3. The NASD shall retain the non-refundable filing fee of \$500.00 paid by the Claimant.

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

#### Concurring Arbitrators' Signatures

/s/  
Peter J. Lavezzoli

Industry

/s/  
P. David Isenberg

Industry

/s/  
Andrew Bartfay

Industry

Date of Decision:

6/3/94