

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

PaineWebber, Inc.

93-01812

Name of Respondent

William Ashby Frayser

REPRESENTATION

For Claimant PaineWebber, Inc. ("PaineWebber") appeared Lisa Tillem, Esq. in-house counsel for PaineWebber, Inc.

Respondent William Ashby Frayser ("Frayser") appeared pro se.

CASE INFORMATION

The Statement of Claim was filed on April 30, 1993.

Claimant's Submission Agreement was signed on April 30, 1993.

Respondent Frayser did not file a Statement of Answer and did not file a Submission Agreement.

HEARING INFORMATION

The panel convened to hear this dispute on January 16, 1995. Upon the oral request of Respondent Frayser the hearing was adjourned. A hearing was held on March 1, 1995 at the NASD Offices located in New York City, New York and lasted one session.

CASE SUMMARY

Claimant alleged that Respondent Frayser, a former registered representative in their employ, received an advance from PaineWebber, Inc. in the amount of \$90,612.00 and Respondent Frayser signed a promissory note ("first note") to PaineWebber in that amount. Claimant also alleged that such indebtedness would be forgiven in five equal annual installments of \$18,122.40. Claimant further alleged that also in connection with Respondent Frayser's employment, on or

about March 4, 1989 PaineWebber advanced Respondent Frayser the sum of \$21,087.00 and Respondent signed a promissory note ("second note") to PaineWebber in that amount. The terms of the note provide that Respondent Frayser's indebtedness would be forgiven in four equal annual installments of \$5,271.75.

It was further alleged by Claimants that the defaulted balances of the first and second notes due and owing at the time Frayser's employment with PaineWebber was terminated was \$68,982.00; that Claimant wrote Respondent and demanded repayment; and that the parties entered into a third promissory note in the amount of \$12,600.00, whereby they settled Respondent Frayser's two prior outstanding promissory notes for \$12,600.00. Moreover, Claimant alleged that Respondent made payments totalling \$1,200.00 leaving a defaulted balance due of \$11,400.00.

Respondent Frayser did not file a Statement of Answer.

RELIEF REQUESTED

Claimant PaineWebber requested an award in its favor and against Respondent Frayser in the amount of \$11,400.00, plus interest \$1,739.05, together with attorneys' fees and costs, as expressly provided for in the Notes.

OTHER ISSUES CONSIDERED & DECIDED

The panel agreed to permit Respondent Frayser to participate in these proceedings telephonically in lieu of an in-person appearance as Respondent resides in Madrid, Spain. A hearing was scheduled for January 16, 1995. At the hearing, Respondent Frayser, whose participation was telephonic, requested an adjournment. The adjournment was requested because Respondent allegedly did not receive adequate notice of the hearing date. The panel granted the adjournment request and all parties and arbitrators agreed to reschedule this matter for March 1, 1995.

On February 15, 1995 Respondent Frayser requested that the March 1, 1995 hearing date be adjourned indefinitely due to a medical condition that would not permit him to travel to New York. The panel denied the request based upon Respondent's earlier representation to the panel that he would appear in this matter telephonically. Respondent Frayser requested reconsideration of the ruling denying his request. The panel again denied the request for an adjournment.

On March 1, 1995 Respondent Frayser forwarded a request for an adjournment via facsimile. The panel advised Respondent Frayser that the request to adjourn the hearing was denied based upon Respondent Frayser's earlier representation to the panel that he would appear in this matter telephonically.

The panel advised the parties that they would proceed with the hearing and requested that Respondent Frayser continue to participate telephonically. The panel further advised Respondent Frayser that the hearing would proceed despite any election on his part to voluntarily terminate his telephonic participation. Respondent Frayser advised the panel that he was voluntarily electing to terminate his telephonic participation.

The arbitration panel made the following rulings as to Respondent Frayser who failed to file an answer in this arbitration and failed to file and present a properly executed submission of the dispute to NASD Arbitration (i.e. Submission Agreement) and failed to participate in this hearing conducted in this matter without obtaining any adjournment thereof:

- (1) Pursuant to Section 1 of the NASD Code of Arbitration Procedure ("Code") the panel found subject matter jurisdiction over this entire controversy and specifically as it related to Frayser.
- (2) The panel found that Frayser was a person associated with an NASD member namely, PaineWebber, at the time this controversy arose. Consequently, the panel found personal jurisdiction over Frayser pursuant to Section 8 of the Code. Additionally, Frayser executed a Form U-4 requiring him to arbitrate at this forum upon demand of the member firm claimant.
- (3) In view of (2) above, Frayser was required to execute and file with the NASD a submission agreement pursuant to Section 25(b) of the Code. In this regard the panel found that the NASD properly served the Claimant's claim upon Frayser pursuant to Section 25(a) of the Code.
- (4) Finally, the panel found that the NASD, pursuant to Sections 21, 26 and 29 of the Code, provided Frayser with "due notice" of the hearing conducted in this matter. The panel, therefore, determined to proceed with the hearing without Frayser whose participation was, as stated previously, unexcused.

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 Frayser be and hereby is liable to the Claimant in the sum of \$11,400.00;
2. Respondent Frayser be and hereby is liable to the Claimant in the sum of \$1,739.05 which represents interest at the rate of 6% from August 15, 1992.
3. Respondent Frayser be and hereby is liable and shall reimburse Claimant the sum of \$1,100.00 which represents filing fees previously deposited by Claimant with the NASD.
4. Each party shall bear their respective costs, including attorneys fees.

FORUM FEES

Pursuant to Section 44c of the Code of Arbitration Procedure, the panel has determined that the NASD shall retain the \$500.00 non-refundable filing fee and \$600.00 hearing session deposit.

1 session X \$600 = \$ 600.00 minus hearing session deposit of \$600.00 = \$0. balance.

Concurring Arbitrators' Signatures
Name



Vicki Z. Holleman, Esq.
Industry Arbitrator - Chairperson

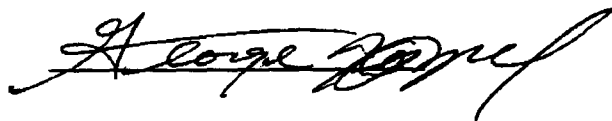
Francis X. Flannery

Kathleen A. Cromie

STATE OF NEW YORK

COUNTY OF KINGS

On this 13 day of APRIL, 1995, before me personally appeared VICKI Z. HOLLEMAN known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he/she executed the same.



GEORGE KOPPEL
Notary Public, State of New York
No. 24-4691583
Qualified in Kings County
Commission Expires January 31, 1996

Date of Decision: April 25, 1995

FORUM FEES

Pursuant to Section 44c of the Code of Arbitration Procedure, the panel has determined that the NASD shall retain the \$500.00 non-refundable filing fee and \$600.00 hearing session deposit.

1 session X \$600 = \$ 600.00 minus hearing session deposit of \$600.00 = \$0. balance.

Concurring Arbitrators' Signatures
Name

Vicki Z. Holleman, Esq.
Industry Arbitrator - Chairperson

Francis X. Flannery
Francis X. Flannery

Kathleen A. Cromie
Kathleen A. Cromie

STATE OF New York
COUNTY OF New York

On this 13th day of April, 1995, before me personally appeared Francis X. Flannery known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he/she executed the same.

Janet F. O'Mara
JANET F. O'MARA
Notary Public, State of New York
No. 24-0341004
Qualified in Kings County
Certificate filed in Kings County
Commission Expires August 15, ~~1990~~ 1996

Date of Decision: April 25, 1995

FORUM FEES

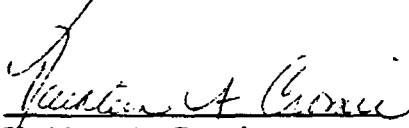
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Concurring Arbitrators' Signatures
Name

Vicki Z. Holleman, Esq.
Industry Arbitrator - Chairperson

Francis X. Flannery



Kathleen A. Cromie

STATE OF

COUNTY OF

On this 17th day of April, 1995, before me personally appeared Kathleen A. Cromie known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he/she executed the same.



EVELYN RODRIGUEZ CHONG

EVELYN RODRIGUEZ CHONG
Notary Public, State of New York
No. 41-5010505
Qualified in Queens County
Certificate Filed in New York County
Commission Expires March 29, 1997

Date of Decision: April 25, 1995