

# NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Painewebber Incorporated

vs.

Award No.  
93-02037

Name of Respondent

Stephen H. Ewanowski

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## REPRESENTATION

For Claimant, PaineWebber Inc. ("PaineWebber"), appeared Jeffrey A. Levinson, Esq. from the law firm of Choate, Hall & Stewart, located in Boston, Massachusetts.

Respondent, Stephen H. Ewanowski ("Ewanowski"), appeared pro se.

## CASE INFORMATION

Statement of Claim was filed on May 19, 1993.

PaineWebber's Submission Agreement was signed on May 19, 1993.

Amended Statement of Claim was filed on August 10, 1993.

Statement of Answer was filed by Respondent on October 10, 1993.

Ewanowski did not sign a Submission Agreement.

## HEARING INFORMATION

Hearing Date/Session: July 24, 1996 - 1 session

Hearing Location: office of NASD Regulation, located at 260 Franklin Street, Boston, Massachusetts.

## CASE SUMMARY

PaineWebber alleged that on or about February 13, 1990, it hired Ewanowski as an Investment Executive in its Wellesley, Massachusetts office. PaineWebber alleged that in connection with Ewanowski's employment, PaineWebber advanced him a \$45,000.00 loan on or about March 2, 1990 and; Ewanowski signed the Promissory Note ("Note") which provided that his indebtedness would be forgiven in four equal annual installments of \$11,250.00, provided certain circumstances were met. PaineWebber also alleged that it advanced Ewanowski a \$47,574.00 loan on or about April 29, 1991 and that this indebtedness would be forgiven in four equal annual installments of \$15,858.00, provided certain circumstances were met. PaineWebber claimed the two agreements provided that if Ewanowski voluntarily terminated his employment with PaineWebber prior to the due date of the Note, PaineWebber could declare the Note immediately due and payable; the 1990 and 1991 Promissory Notes had due dates of February 12, 1994 and April 25, 1994, respectively.

PaineWebber alleged that Ewanowski voluntarily resigned on March 31, 1993 and went to work for Dean Witter. PaineWebber alleged that as a result of Ewanowski's resignation, he owed \$11,250.00 on the 1990 Note, and \$31,716.00 on the 1991 Note, for a total debt of \$42,966.00. PaineWebber also alleged that it tried to resolve the matter amicably, but Ewanowski failed to repay his debt.

In its amended Statement of Claim, PaineWebber contends that Ewanowski should contribute to pay half of the award rendered against them in an arbitration case against PaineWebber, Inc. and Steven Ewanowski, in which the customer alleged that Ewanowski made misrepresentations regarding stocks she purchased and was awarded \$1,237.50 in damages.

Respondent Ewanowski made a general denial to PaineWebber's allegations of wrongdoing. Ewanowski alleged that PaineWebber hired him away from Shearson Lehman Hutton by making a number of promises that they did not meet. Ewanowski contended that PaineWebber doctored documents pertaining to the terms of their agreements. Ewanowski also alleged that the 1991 Note was not supposed to be a Note, but instead a cash bonus, and that PaineWebber's manager Richard Skae told him to sign the Note if he wanted the money. Ewanowski argued that he signed the Note under duress. Respondent Ewanowski contended that he had to expend his money to gain competitive administrative support.

#### **RELIEF REQUESTED**

Claimant requested \$43,584.75 in compensatory damages, plus interest, attorney's fees and costs.

#### **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 remains on file with the NASD Regulation.

#### **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 Ewanowski is hereby liable to PaineWebber in the amount of \$43,584.75 (Forty Three Thousand, Five Hundred Eighty Four Dollars and Seventy Five Cents), representing compensatory damages.
2. Respondent Ewanowski is further liable to PaineWebber and shall pay PaineWebber \$5,000.00 (Five Thousand Dollars and Zero Cents) in attorney's fees.
3. All other claims are denied.

#### **FORUM FEES**

Pursuant to Section 44(c) of the *Code of Arbitration Procedure*, the arbitrators have determined that the NASD shall retain the \$500.00 non-refundable filing fee previously deposited by Claimant and have assessed the following forum fees:

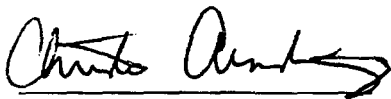
1 Session	x	\$600.00	=	\$600.00
Amount deposited by Claimant			=	<u>\$600.00</u>
Outstanding fees			=	<b>\$0.00</b>

Respondent Ewanowski be and hereby liable for the sum of \$600.00 representing the of the total amount of forum fees assessed. Since, PaineWebber paid the initial session deposit, Ewanowski shall refund \$600.00 to PaineWebber.

**ARBITRATION PANEL**

Christine Armstrong, Esq.	-	Industry Chairperson
Timothy F. Shanahan, CFP	-	Industry Panelist
Marie T. Titolo	-	Industry Panelist

Concurring Arbitrator's Signature



Christine Armstrong, Esq.

NASDR's Date of Decision: September 10, 1996

*signed 8/31/96*

1 Session	x	\$600.00	=	\$600.00
Amount deposited by Claimant			=	<u>\$600.00</u>
Outstanding fees			=	\$0.00

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Concurring Arbitrator's Signature

*Marie T. Titolo*

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