

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

PaineWebber Incorporated,
Claimant/Counterrespondent,

v.

No. 93-02800

Fred H. Larrabee, III,
Respondent/Counterclaimant

REPRESENTATION OF PARTIES

Edward Degenhardt, Esq., Litigation Counsel, PaineWebber Incorporated, Weehawken, New Jersey, represented PaineWebber Incorporated ("Claimant").

Fred H. Larrabee, III ("Respondent") appeared on his own behalf.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about July 16, 1993. Claimant signed its Submission Agreement on July 14, 1993.

Respondent's Answer and Counterclaim was filed on or about October 20, 1993. Respondent signed his Submission Agreement on October 11, 1993.

Claimant filed its Response to the Counterclaim on or about December 6, 1993.

HEARING INFORMATION

Hearing date: June 16, 1994. One (1) session.

Hearing Location: Scottsdale, Arizona.

CASE SUMMARY

Claimant sought to recover money owed by a former employee for a defaulted ACA/EFL Promissory Note (the "Note") numbered 2726 and for outstanding taxes. Claimant stated that in connection with Respondent's employment, in or about April 20, 1990, Respondent signed the Note for \$43,500.00. The Note provided, in part, that the loan would be forgiven in five (5) equal installments. Claimant further stated that the Note also provided that if Respondent's employment was terminated for any reason prior to the

due date of the note, then Claimant, at its option, could declare the Note immediately due and payable. Claimant also stated that Respondent entered into an amendment of the Note in or about May 1991 concerning withholding taxes. Respondent resigned from employment in or about May 28, 1993. Claimant alleged that Respondent has never paid the monies still owing pursuant to the Note.

In Response to the Statement of Claim, Respondent did not deny having signed the Note. However, Respondent asserted that: Upon termination, he was told by an officer of Claimant, that if he was leaving the brokerage industry he would not be pursued to repay his Note; Claimant is selective in its pursuit of the claim against him while not pursuing other former brokers; he was unable to perform his job when Claimant transferred him to the Sun City office; Claimant never informed him that he needed to maintain a production level to remain at the payout percentage originally offered to him upon transferring employment to Claimant; and that the branch manager failed to fulfill his responsibility to Claimant as well as Respondent. Additionally, Respondent asserted a Counterclaim for the costs incurred to him from Claimant's lack of proper conduct and responsibility. Respondent also asserted that he was forced to leave employment with Claimant, and the industry, because of the reduced payouts forced on him by Claimant's branch manager.

For its Response to the Counterclaim, Claimant denied the allegations contained therein. In addition, Claimant asserted that: The Counterclaim is unsubstantiated; unrelated to the case at hand; lacks the necessary showing of causation for damages alleged; and that it is meritless. Claimant further asserted that any loss realized by Respondent was the direct consequence of his own conduct and cannot be attributed to Claimant or any of its officers.

RELIEF REQUESTED

Claimant requested entry of an award against the Respondent in the amount of \$19,197.57, plus interest, together with attorneys' fees and costs, as expressly provided for in the Note #2726. Claimant further requested the dismissal of Respondent's Counterclaims.

Respondent requested that the Statement of Claim be dismissed. In addition, Respondent requested, in his Counterclaim, an award of 92,850.00. The following is a list detailing the final figure arrived at in the counterclaim: \$9,000.00 lost equity in home; \$14,000.00 second mortgage balance; loss of net pay associated with lower net payout at \$11,250.00; negative effect on commission production of approximately \$17,500.00 in lost income; \$15,000.00 in mental anguish associated with losing his home, moving to

another state as well as the harassment associated with Claimant demanding \$29,400.00 as repayment for the Note; punitive damages in the amount of \$25,000.00; RICO damages; and costs of \$1,100.00 for filing the Counterclaim.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed by 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 undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent/Counterclaimant Fred H. Larrabee, III, is liable for, and shall pay to Claimant/Counterrespondent PaineWebber Incorporated the sum of \$19,197.57 as satisfaction of its claims made herein.
2. Respondent Fred H. Larrabee, III's Counterclaims are, and each of them, denied and dismissed with prejudice.

OTHER COSTS

Each party shall bear its own costs and expenses associated with this arbitration, including attorney's fees, except as set forth more fully below.

FORUM FEES

Pursuant to Section 44(c) of the NASD Code of Arbitration Procedure (the "Code"), the following forum fees are assessed:

1 hearing sessions x \$600.00 = \$600.00

Pursuant to Section 44(c) of the Code, the NASD shall retain the nonrefundable claim filing fee in the amount of \$500.00, and shall RETAIN the hearing session deposit in the amount of \$600.00 previously paid to the NASD by the Claimant.

Pursuant to Section 44(c) of the Code, the NASD shall retain the nonrefundable counterclaim filing fee in the amount of \$500.00. The NASD waived the Counterclaim filing fee in the amount of \$750.00, based on a showing of financial hardship.

CONCURRING ARBITRATORS

Dated:

Name:

June 16, 1994

Mark Leibshon/s/
Mark Leibsohn
Presiding Chair
Industry Arbitrator

June 16, 1994

Maurice O. O'Neil/s/
Maurice O. O'Neil
Industry Arbitrator

June 16, 1994

Leon G. Mackey/s/
Leon G. Mackey
Industry Arbitrator

Date of Service by the NASD: 6-20-94