

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

PaineWebber, Incorporated

93-03261

Name of Respondent

Daniel P. Chrzanowski

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on August 19, 1993, Claimant PaineWebber, Incorporated, by and through their in-house counsel Garry J. Stegeland, alleged that on or about March 13, 1990 Claimant hired Respondent Daniel P. Chrzanowski as an Investment Executive in its Wellesley, Massachusetts office and in connection with Respondent's employment, on or about March 12, 1990, Respondent signed a Form U-4 by which he agreed "to arbitrate any dispute, claim or controversy that may arise between me and my firm". Claimant further alleged also in connection with Respondent's employment, on or about March 30, 1990, Claimant advanced Respondent the sum of \$19,598.00 and Respondent signed a promissory note (the "Note"), known as an Advance Compensation Agreement ("ACA") or, alternately, an Employee Forgivable Loan ("EPL"), to Claimant in that amount. Claimant contended that the terms of the Note provide, in pertinent part, that Respondent's indebtedness would be forgiven in four equal annual installments of \$4,899.50 each, provided that certain conditions were met, but if Respondent voluntarily terminated his employment with Claimant prior to the due date of the Note, then Claimant, at its option, may declare the Note immediately due and payable. Claimant further contended that in connection with Respondent's sum of \$11,397.00 and Respondent signed a second promissory note whereby the terms of this second Note provided, in pertinent part, that Respondent's indebtedness would be forgiven in three equal annual installments of \$3,799.00 each, provided that certain conditions were met, but that if Respondent's employment with Claimant were terminated for any reason whatsoever, other than for cause, prior to the due date of the Note, then Claimant, at its option, may declare the Note immediately due and payable. Claimant asserted that Respondent voluntarily resigned from Claimant on April 14, 1993 to go work for Century Bank, in its brokerage area, where he continues to be employed in the securities industry. Claimant further asserted that since Respondent's employment, three-fourths (3/4) or \$14,698.50 of the first/1990 Note was to be

forgiven on the Note if he paid the taxes, which left a balance due of one-quarter (1/4) of the Note, or \$4,899.00 not forgiven on the Note, furthermore, since Respondent's employment with Claimant terminated after the second anniversary of the second/1991 Note, two-thirds (2/3) or \$7,598.00 of the second/1991 Note was to be forgiven on the Note if he paid the taxes which left a balance due of one-third (1/3) of the Note, or \$3,799.00 not forgiven on the Note. Claimant further alleged that to summarize, Respondent's termination triggered a debt to Claimant in the amount of \$8,698.50 whereby his termination triggered a debt to Claimant in the aggregate amount of \$9,363.94, at which time, Claimant attempted, unsuccessfully, to resolve this matter amicably with Respondent, who has failed and refused to honor the Agreements and to repay his debt.

Respondent Daniel P. Chrzanowski, who appeared Pro Se, maintained that on or about March 13, 1990 Respondent was hired as an Investment Executive with Claimant PaineWebber Incorporated in the Wellesley, MA office and in connection with his hiring and employment on or about March 30, 1990, Claimant gave him a check for \$19,598.00 for his services to be provided to Claimant and additionally for the client base that he was transferring to Claimant from Shearson Lehman Hutton. Respondent further maintained that in connection with the Note, verbal promises were also made to him in regard to specific areas of business enhancement whereby such promises included two sales assistants if requested by the broker and neither of these verbal commitments were honored. Respondent contended that in fact, he was provided with only two sales assistants per every four to five Investment Executives and all sales assistants also were responsible for taking turns as receptionist, which in turn took time away from himself and other brokers whereby, Respondent was hired by Claimant to produce revenue, but frequently found himself pushing paper. Respondent further contended that on or about June 17, 1991, he received a check in the sum of \$11,397.00 whereby this second check was presented to him because certain production levels were achieved within fourteen months of his original hire date; however, it was never mentioned to him in any of the previous discussions that this second check would also be categorized as another Advanced Compensation Award whereby prior to the presentation of the check for \$11,397.00, Respondent was informed that the check would be categorized as an "ACA" loan and that he could not take receipt of the check unless he signed a document to that effect. Respondent asserted that he took receipt of the check and signed the document in lieu of the fact that he needed and has counted on receiving this money for bills and other non-ACA loan repayments. Respondent further asserted that on April 14, 1993, he resigned from Claimant to accept a position at Century Bank and after his departure from Claimant, he had several discussions with a Mr. Columbo from Claimant's Collection Department during which he repeatedly expressed that he would like to negotiate a settlement with Claimant to avoid arbitration. Respondent further maintained that he left behind approximately 50% of his client base at Claimant, whereby he felt that there were reasonable circumstances that warranted a negotiated settlement between himself and Claimant.

RELIEF REQUESTED

Claimant PaineWebber, Incorporated requested the sum of \$9,363.94 in actual damages, plus interest at the rate of 10% per annum from April 14, 1993 together with attorney's fees in the amount of \$936.39 and reimbursement of the NASD filing fee.

Respondent Daniel P. Chrzanowski requested the claim be denied as to repayment of the second loan and will accept a decision on the first loan.

AWARD

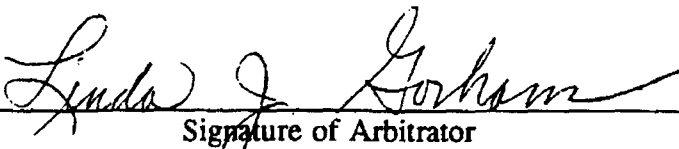
Pursuant to Section 10 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Securities Arbitrator, Linda J. Gorham, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on August 9, 1993 and by the Respondent on November 12, 1993.

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 Daniel P. Chrzanowski is liable and shall pay to the Claimant PaineWebber, Incorporated the sum of \$9,363.94 in damages.
2. Respondent Daniel P. Chrzanowski is liable and shall pay to the Claimant PaineWebber Incorporated simple interest at the rate of 5% from the date of decision of this award to the date of payment of the award.
3. The Claimant's request for attorney's fees is denied.
4. The parties shall bear their respective costs.
5. 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 Daniel P. Chrzanowski is liable and shall pay to the Claimant the sum of \$287.50, as reimbursement of one-half of the filing fee.

AFFIRMATION

I, **LINDA J. GORHAM**, 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.



Signature of Arbitrator

DATE OF DECISION: February 24, 1994

STATE OF: Mass

SS:

COUNTY OF: Suffolk

On this 18th day of February 1994, before me personally appeared Linda J. Gorham to me known and known before me to be the individual described in and who executed the foregoing instrument and she duly acknowledged to me that she executed the same.



Deborah Marzitta