

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

PaineWebber Incorporated

93-03973

Name of Respondent

John D. Gray

REPRESENTATION

For Claimant: PaineWebber Incorporated ("PaineWebber") was represented by Nicholas P. Kapur, Esq. and Joseph Generelli, Esq. of PaineWebber Incorporated, Weehawken, New Jersey.

For Respondent: John D. Grey ("Grey") was represented by Lawrence R. Goldberg, Esq., located in Clayton, Missouri.

CASE INFORMATION

Statement of Claim filed: September 30, 1993.

Claimant's Submission Agreement signed on: September 27, 1993 by Garry J. Stegeland, Associate General Counsel, First Vice President, PaineWebber Incorporated.

Statement of Answer filed by Respondent on: November 24, 1993.

Respondent's Submission Agreement signed on: November 24, 1993.

HEARING INFORMATION

Pre-Hearing Conference: None Held

Hearing Date/Sessions: June 22, 1994 for One (1) session.

Hearing Location: St. Louis, Missouri.

CASE SUMMARY

Claimant PaineWebber alleged that Respondent Gray failed to pay the amounts due pursuant to a promissory note signed in connection with his employment. PaineWebber alleged that:

1. On June 15, 1992, PaineWebber advanced Gray the sum of \$22,880.00 and Gray signed a promissory note. The terms of the note provided, in part, that Gray's indebtedness would be forgiven in three equal annual installments of \$7,626.66 each, provided that certain conditions were met, but that if Gray's employment was terminated for any reason whatsoever prior to the date of the Note, then PaineWebber, at its option, may declare the Note immediately due and payable;
2. Gray's employment was terminated on July 23, 1993 due to lack of production, after the first anniversary of his employment. As one-third the note was forgiven, this left a balance due of \$15,253.34 not forgiven;
3. The promissory note expressly provided that all forgiveness of the note was conditional upon the recipient of the loan paying to PaineWebber all applicable taxes required to be withheld and collected by PaineWebber for forgiveness of the note. Gray was requested to pay to PaineWebber required outstanding taxes in the amount of \$809.95 for the forgiven part of the Note;
4. The termination triggered a debt due to PaineWebber in the aggregate sum of \$16,063.29, representing the \$15,253.34 owed on the note and the \$809.95 for outstanding taxes. PaineWebber sent a letter to Gray, declaring the amount immediately due and payable. Gray has refused to pay the debt; and
5. Under the terms of the note, Gray was also required to pay interest and all costs of collection, including reasonable attorneys' fees.

Respondent Gray denied any liability for the relief requested, alleging that:

1. Pursuant to the terms of the Note, PaineWebber was required to forgive the principal amount due and owing by Gray if his employment was terminated by PaineWebber for other than cause, as that term was defined in the Note;
2. Gray's employment was terminated for lack of production, which is outside the scope of any acts and/or omissions defined as cause in the Note; therefore, PaineWebber has no right to declare the Note immediately due and payable; and
3. Pursuant to the plain language of the Note, PaineWebber has no right to

declare the Note immediately due and payable. Gray is not indebted to PaineWebber.

RELIEF REQUESTED

PaineWebber requested entry of an award in its favor against Gray in the amount of \$16,063.29, plus interest, together with attorneys' fees and costs, as expressly provided for in the Note.

Gray requested that PaineWebber's Statement of Claim be dismissed with prejudice, that Gray be awarded his attorneys' fees and costs, and for such further relief as the Panel deemed just and proper.

OTHER ISSUES CONSIDERED & DECIDED

Prior to the beginning of hearing on June 22, 1994, Arbitrator Joan W. Fox determined that she would recuse herself after being advised of a potential conflict with a party. Pursuant to Section 24 of the NASD Code of Arbitration Procedure, the parties agreed to continue the arbitration before the two remaining arbitrators.

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 originals 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 John D. Gray is liable for and shall pay to Claimant PaineWebber Incorporated the sum of \$809.95 as actual damages;
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
3. All relief not specifically granted is hereby denied.

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) hearing session x \$600.00 per session = \$600.00.

The National Association of Securities Dealers, Inc. shall retain the \$500.00 non-refundable claim filing fee and refund \$300.00 of the \$600.00 hearing session deposit previously deposited by the Claimant, PaineWebber Incorporated. Respondent John D. Gray is liable for and shall pay to Claimant PaineWebber Incorporated the sum of \$250.00 as partial reimbursement of the non-refundable claim filing fee. Respondent John D. Gray is liable for and shall pay to the NASD the sum of \$300.00 as forum fees.

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

Concurring Arbitrators' Signatures

Name

Date

/s/ Edward Ward, Esq.
Edward Ward, Esq.
Industry Arbitrator
Chairperson

September 12, 1994

/s/ Thomas F. Basso
Thomas F. Basso
Industry Arbitrator

September 6, 1994

For NASD Use Only

Date of Service of Award: 9-16-94