

9502078

**N.A.S.D. AWARD****NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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**In the Matter of the Arbitration Between****Name of Claimant(s)****PaineWebber, Inc.**

93-04788

**Name of Respondent(s)****David H. Joy**

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**REPRESENTATION**

For Claimant, PaineWebber, Inc. ("PW"): Melanie S. Cherdack, Esq. of PaineWebber, Inc., Ft. Lauderdale, Fl.

Respondent, David Joy ("Joy") was pro se.

**CASE INFORMATION**

Statement of Claim filed: November 17, 1993. Claimant's Submission Agreement signed on: November 16, 1993 by Joseph Generelli on behalf of PW.

Statement of Answer filed by Respondent on: February 9, 1994. Respondent's Submission Agreement signed on: February 10, 1994.

**HEARING INFORMATION**

On December 8, 1994 in Tampa, Florida a hearing lasting two sessions was conducted.

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### **CASE SUMMARY**

Claimant, PaineWebber, sought to recover under a promissory note entered into by Respondent, Joy. Claimant alleged that, On May 5, 1992, Joy signed a promissory note for \$20,000.00 forgivable in five annual installments of \$4,000.00 each, and that Joy's employment terminated on or about June 30, 1993. Accordingly, only one annual installment of the promissory note had been forgiven. PaineWebber asserted that, pursuant to the terms and conditions of the promissory note, Joy was in default and that the remaining unforgiven portion of the promissory note was due and owing.

Joy asserted that he did not owe the money to PaineWebber, claiming that he was wrongfully terminated. Specifically, Joy claims that he was not terminated for lack of production, but for some other reason. Joy further asserted a counterclaim against PaineWebber on this same ground.

### **RELIEF REQUESTED**

Claimant requested damages in the amount of \$15,927 plus interest in the amount of \$1,924.71 plus attorney's fees and costs.

Respondent requested dismissal of the claim and counterclaimed for damages in the amount of \$250,000.00.

### **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(s) remain on file with the NASD.

### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

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1. Respondent, Joy is found not liable to PW and, therefore, the claim against him is hereby dismissed.
2. Claimant, PW's request for costs and attorney's fees is denied.
3. Claimant/Counter-Respondent, PW is found not liable to Respondent/Counter-Claimant, Joy and, therefore, the counterclaim against it is hereby dismissed.

#### **OTHER COSTS**

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding with the exception of the forum fees as noted below.

#### **FORUM FEES**

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$1,200.00 (2 sessions x \$600.00 per session).

1. Claimant, PW is hereby assessed forum fees in the amount of \$1,200.00, for which the NASD shall retain the \$600.00 filing fee previously deposited by Claimant in partial satisfaction thereof.
2. The NASD shall retain the \$500.00 nonrefundable filing fee previously paid by Claimant.
3. Respondent, Joy is hereby assessed \$500.00 for the nonrefundable filing

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fee which should have been paid upon the filing of Respondent's counterclaim.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

15/  
Linda Oldt

Industry

15/  
Joseph Amonette

Industry

15/  
Clyde Renfroe, Jr.

Industry

Date of Decision: 2-16-95