

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

John Denes

94-01083

Name of Respondent

PaineWebber Incorporated

REPRESENTATION

For Claimant: John Denes ("Denes") was represented by Richard A. Meier, Esq. of Miller & Shenck, P.C., located in Bloomfield Hills, Michigan.

For Respondent: PaineWebber Incorporated ("PaineWebber") was represented by Nanette L. Korpi, Esq. and Andrew W. Mychalowych, Esq., of Haliw Skiliano & Mychalowych, P.C., located in Farmington Hills, Michigan.

CASE INFORMATION

Statement of Claim filed: March 22, 1994.

Claimant's Submission Agreement signed on: March 11, 1994.

Statement of Answer filed by Respondent PaineWebber on: May 12, 1994.

Respondent's Submission Agreement signed on: June 3, 1994 by Evan Charles, Corporate Vice President, PaineWebber Incorporated.

HEARING INFORMATION

Pre-Hearing Conference: None Held.

**Hearing Dates/Sessions: October 21, 1994 for Two (2) sessions;
March 8, 1995 for Two (2) sessions; and
March 9, 1995 for Two (2) sessions.**

Hearing Location: Southfield, Michigan.

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CASE SUMMARY

Claimant Denes alleged that Respondent PaineWebber wrongfully discharged him from his employment. Denes specifically alleged that:

1. In 1989, Denes was employed in the Orlando, Florida branch of PaineWebber as a registered representative;
2. On or about March 1989, a client of Denes reported to a credit bureau that he had a substantial account with PaineWebber and used the information to secure a loan;
3. The FBI investigated and interviewed Denes on or about March 10, 1989. They concluded that Denes was not involved in his client's scheme to procure a loan and Denes was not under investigation for any wrongdoing;
4. That same date, Denes' manager was told to terminate Denes by his superior. A Form U-5 was filed on April 3, 1989, alleging that "Denes deliberately misrepresented a prospective client's financial status to various creditors." On June 13, 1989, PaineWebber amended the Form U-5 to state that PaineWebber had discovered through an FBI interview that John Denes had deliberately misrepresented a prospective client's financial status to various creditors and financial institutions;
5. In 1990, an attorney representing Denes attempted to correct the inaccuracies in the Form U-5. The attorney was told by a PaineWebber employee that she would look at the paperwork and evidence, leading Denes to believe that if the evidence of his lack of wrongdoing was submitted refuting the current Form U-5, PaineWebber would amend the Form U-5. After working on this for several months, Denes was informed by PaineWebber that it had no intention of changing the Form U-5.

Based upon the above allegations, Denes asserted claims for wrongful discharge, breach of an implied covenant of good faith and fair dealing, and misrepresentation.

Respondent PaineWebber denied the material allegations of the Statement of Claim and asserted several defenses, including the following:

1. The claims are barred by the applicable statute of limitations;
2. Denes was an employee at-will and has failed to set forth a public policy exception his at-will employment;

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3. The Form U-5 submitted by PaineWebber does not arise out of a contractual obligation and Denes is not a third-party beneficiary of an alleged contract between PaineWebber and the NASD pertaining to the filing of a Form U-5;

4. No employee or agent of PaineWebber made any misrepresentation or false statements to Denes or his attorney;

5. PaineWebber had a legitimate business reason for discharging Denes based upon belief or information which was reasonably relied on that Denes misrepresented the financial condition of a prospective client;

6. The Statement of Claim fails to state a claim upon which relief can be granted; and

7. Denes failed to mitigate damages by failing to undertake efforts to secure employment after his termination by PaineWebber.

RELIEF REQUESTED

Claimant Denes requested entry of an award against Respondent for damages in the sum of \$500,000.00 for lost wages, lost benefits and emotional damage.

Respondent requested that the claim be denied in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

Respondent filed a Motion to Dismiss on September 16, 1994. The Claimant's Response to the Motion to Dismiss was filed October 19, 1994. The parties argued the merits of the Motion at the hearing on October 21, 1994. The Motion was denied at that time.

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. The Statement of Claim is hereby dismissed with prejudice and denied in its

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entirety;

2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein;

3. Any relief not specifically enumerated is herein denied.

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Six (6) hearing sessions x \$750.00 per session = \$4,500.00.

The National Association of Securities Dealers, Inc. has waived the payment of the claim filing fee. Claimant John Dones is liable for and shall pay to the NASD the sum of \$2,250.00. In addition, The NASD shall retain the \$200.00 surcharge paid by Respondent PaineWebber Incorporated. Respondent PaineWebber Incorporated is liable for and shall pay to the NASD the sum of \$2,250.00 as forum fees.

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

Concurring Arbitrators' Signatures

Name

Date

/s/ Barry Goldman, Esq.

May 15, 1995

Barry Goldman, Esq.

Public Arbitrator

Chairperson

/s/ Jerome D. Sobczak

May 16, 1995

Jerome D. Sobczak

Public Arbitrator

/s/ John R. Main

June 5, 1995

John R. Main

Industry Arbitrator

For NASD Use Only

Date of Decision: May 19, 1995