

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Name of Claimant

94-01220

Name of Respondents

PaineWebber, Inc.
Thomas Reichert

REPRESENTATION

For Claimant: Dan Brecher, Esq., of Law Offices of Dan Brecher, located in New York, New York.

For Respondents: Evan J. Charkes, Senior Litigation Counsel of PaineWebber, Inc., located in Weehawken, New Jersey.

CASE INFORMATION

Statement of Claim filed: February 28, 1994.

Claimant's Submission Agreement signed on: February 28, 1994.

Joint Statement of Answer filed by Respondents PaineWebber, Inc. ("PaineWebber") and Thomas Reichert ("Reichert") on: June 3, 1994.

Respondent PaineWebber's Submission Agreement signed on: June 1, 1994.

Respondent Reichert's Submission Agreement signed on: June 1, 1994.

HEARING INFORMATION

Hearing Dates/Sessions: February 15, 1995 / 1 Session.
May 8, 1995 / 2 Sessions.

May 9, 1995 / 3 Sessions.
May 10, 1995 / 2 Sessions.
May 22, 1995 / 2 Sessions.
May 23, 1995 / 2 Sessions.
May 24, 1995 / 2 Sessions.
June 7, 1995 / 3 Sessions.

Hearing Location: Offices of the National Association of Securities Dealers, Inc.
located at 33 Whitehall Street, New York, New York.

CASE SUMMARY

Claimant alleged that Respondent PaineWebber, by and through its Branch Manager for PaineWebber's Pearl River, New York office, Respondent Reichert, breached its employment agreement with Claimant by failing to provide Claimant with proper support services; proper management, supervision and advice; leads for new accounts in a fair and equitable manner; and, allocations of new issues in a fair and equitable manner among stockbrokers in proportion with their sales production. Claimant further alleged that Respondents also breached the employment agreement with Claimant by failing to act in a fair, equitable and supportive manner in assisting Claimant in his dealings with customers, and in his efforts to obtain new accounts. Claimant further alleged that Respondent Reichert improperly appropriated several clients' accounts who had requested that Claimant act as their broker. Claimant alleged that several members of Claimant's country club, which cost Claimant \$10,000 a year to be a member, told Reichert that they wanted Claimant to handle their accounts but that Reichert solicited them instead. Claimant further alleged that Reichert allocated client accounts away from Claimant to himself and his brother-in-law. Claimant next alleged that Reichert failed to assist Claimant in completing the necessary steps to become a fiduciary to an account held by Local 373 of the Plumbers and Steamfitters' Union and as a result Claimant lost the account. Claimant alleged that the foregoing alleged acts on the part of Respondents PaineWebber and Reichert constituted a breach of PaineWebber's employment contract with Claimant and that as a result of this breach, Claimant left his employment with PaineWebber in November of 1993. Claimant alleged that because of leaving, he lost the vesting of his pension which would have vested on June 1, 1994.

Claimant further alleged that Respondents breached their fiduciary duty to Claimant. Claimant alleged that Reichert, as branch office manager, had a fiduciary duty to supervise Claimant, and Reichert breached this duty by acting in an abusive and improper manner. Claimant alleged as well, that PaineWebber had a fiduciary duty to Claimant to supervise Reichert and that PaineWebber knew or should have known about the improper actions of Reichert as a branch manager but failed to do anything to correct the situation. Claimant alleged that complaints had been made to the regional director about Reichert but nothing was done to correct the situation.

Claimant further alleged that Respondents tortiously interfered with Claimant's contracts with

clients. Claimant alleged that after he left the employ of PaineWebber, Reichert instructed salesmen in the Pearl River office to call Claimant's accounts and to offer them portions of PaineWebber new issues which Reichert had not allowed Claimant to obtain for his customers. Claimant further alleged that other brokers were told to call Claimant's accounts and offer to get them tax free bond issues and to denigrate Claimant, by telling Claimant's customers that the Claimant was unstable and was a broker who transferred from firm to firm. Claimant alleged that this constituted tortious interference with Claimant's contractual relations.

Respondents maintained that Claimant voluntarily resigned from PaineWebber in order to join Smith Barney Shearson that Claimant was an employee-at-will under New York law. Respondents further maintained that Claimant's allegations that Respondents did not provide adequate support services were demonstrably false inasmuch as Claimant earned nearly \$800,000 during his time at PaineWebber, nearly double what he earned in a comparable time period at his previous employment. Respondents maintained that Reichert fairly and equitably distributed new issues to all the brokers in the Pearl River office and that Claimant received his equitable share of new issues.

Respondents also maintained that Claimant did not leave PaineWebber because of Respondents' alleged acts, but rather that Claimant left PaineWebber because he "struck a better deal" with Smith Barney Shearson. Respondents maintained that overall, PaineWebber reimbursed Claimant \$14,079.99 for his country club dues and fees and that no member of the Apple Ridge Country Club told Reichert that they wanted Claimant to specifically handle their account.

Respondents maintained that some accounts were taken from Claimant, but this was due to the fact that these accounts needed constant supervision and that Claimant was not in the office sufficient hours per week to properly handle the accounts.

Respondents maintained that Claimant did not lose the Local 373 account because of any action by Respondents. Respondents maintained that Claimant was properly told that he could not act as a fiduciary for the Local 373 account but he could become the money manager through the Portfolio Management Program, which permits a broker to be a money manger for a particular account and charge a fee for his services. Respondents maintained that Claimant did not choose to participate in this program until one month before he decided to leave PaineWebber.

Respondents maintained that Claimant knew that would lose benefits of PaineWebber's pension plan since he was leaving before having worked at PaineWebber for five years. Respondents maintained that Claimants received the PaineWebber Benefits Handbook which states that, "You become vested in your retirement benefits when you meet either of these conditions: (a) reach age 65; or (b) complete five years of service." Respondents maintained that since Claimant did not complete five years of service, he never vested in PaineWebber's pension plan.

Respondents maintained that under New York law no fiduciary duty exists between an employer

and an at-will employee like Claimant. Respondents maintained that Claimant was an employee-at-will and that Claimant acknowledged that in writing.

Respondents maintained that Claimant failed to allege the requisite legal elements for a claim of tortious interference with contract. Respondents maintained that Claimant did not identify any valid contracts that were interfered with by PaineWebber. Without the existence of a valid contract, there can be no tortious interference with cause of action. Respondents maintained that Claimant failed to show any damages caused by Respondents' conduct.

Respondents maintained that neither PaineWebber nor Reichert told any of the Pearl River brokers to "denigrate" Claimant "by telling claimant's customers that the Claimant was unstable and is a broker who transfers from firm to firm." In any event, Respondents maintained, such allegations do not meet the legal standards for tortious interference with contract.

RELIEF REQUESTED

Claimant requested:

1. Damages in an amount in excess of \$300,000 to be determined by the arbitrators;
2. An accounting of the following: allocations of new issues, receipt and distribution of new account inquiries at the Pearl River office in response to advertisements in the period from June 1989 to November 1993, and assignments of accounts to another broker upon any broker leaving that office during the relevant period;
3. An order directing all brokers at the PaineWebber Pearl River office to cease and desist from disparaging and denigrating Claimant to Claimant's accounts; and
4. Other and further relief, including reasonable attorney's fees, together with interest and costs, as the arbitration tribunal deems appropriate.

Respondents requested:

1. The Statement of Claim filed by Claimant be dismissed in its entirety.
2. The panel should award Respondents the costs of defense, including reasonable attorney's fees.

AWARD

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

1. Claimant's claims against both PaineWebber and Thomas Reichert are dismissed.
2. Each party shall bear its own respective costs including attorneys' fees.
3. All other claims are hereby denied.

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

17 sessions X \$750 = \$12,750 minus hearing session deposit of \$750 = net \$12,000 due.

Forum fees Assessed Against:

1. Claimant Thomas Arcuik is assessed the sum of \$4,250 which represents one-third of the total forum fees due, less \$750 hearing session deposit paid by Claimant, leaving \$3,500 due. Claimant is liable and shall pay to the NASD the sum of \$3,500.
2. Respondent PaineWebber is assessed the sum of \$4,250 which represents one-third of the total forum fees due. PaineWebber is liable and shall pay to the NASD the sum of \$4,250.
3. Respondent Thomas Reichert is assessed the sum of \$4,250 which represents one-third of the total forum fees due. Thomas Reichert is liable and shall pay to the NASD the sum of \$4,250.

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

Page 6

NASD Award #94-01220

Concurring Arbitrators' Signatures

Name



Jerome H. Levy - Industry Chairperson

Joseph J. Cassidy - Industry Panelist

James R. Madan - Industry Panelist

Date of Decision: June 22, 1995

STATE OF: *NEW YORK*

COUNTY OF: *NEW YORK*

SS:

On this *21* day of *JUNE*, 1995, before me personally appeared **Jerome H. Levy** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



ANDREW RUSSELL
Notary Public, State of New York
No. 02RU5034752
Qualified in New York County
Commission Expires Oct. 17, 19*96*

STATE OF:

COUNTY OF:

SS:

On this day of , 1995, before me personally appeared **Joseph J. Cassidy** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

STATE OF:

COUNTY OF:

SS:

On this day of , 1995, before me personally appeared **James R. Madan** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

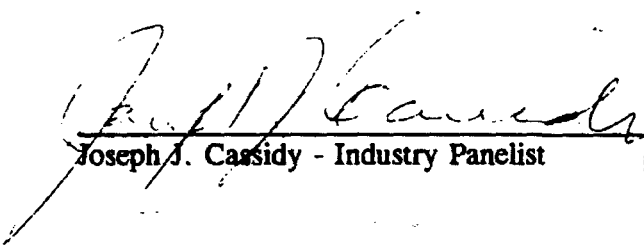
Page 6

NASD Award #94-01220

Concurring Arbitrators' Signatures

Name

Jerome H. Levy - Industry Chairperson


Joseph J. Cassidy - Industry Panelist

James R. Madan - Industry Panelist

Date of Decision: June 22, 1995

Page 7

NASD Award #94-01220

STATE OF:

SS:

COUNTY OF:

On this day of , 1995, before me personally appeared Jerome H. Levy known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

STATE OF: *New York*

SS:

COUNTY OF: *Nassau*

On this *16* day of *June* , 1995, before me personally appeared Joseph J. Cassidy known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Hlene Reif

HLENE REIF
Notary Public, State of New York
No. 01RE5037250
Qualified in Nassau County
Commission Expires December 18, 1998

STATE OF:

SS:

COUNTY OF:

On this day of , 1995, before me personally appeared James R. Madan known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Page 6

NASD Award #94-01220

Concurring Arbitrators' Signatures

Name

Jerome H. Levy - Industry Chairperson

Joseph J. Cassidy - Industry Panelist

A handwritten signature in cursive script, appearing to read "James R. Madan".

James R. Madan - Industry Panelist

Date of Decision: June 22, 1995

Page 7

NASD Award #94-01220

STATE OF:

SS:

COUNTY OF:

On this day of , 1995, before me personally appeared **Jerome H. Levy** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

STATE OF:

SS:

COUNTY OF:

On this day of , 1995, before me personally appeared **Joseph J. Cassidy** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

STATE OF:

New York

SS:

COUNTY OF:

New York

On this *15th* day of *JUNE* , 1995, before me personally appeared **James R. Madan** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



ANDREW RUSSELL
Notary Public, State of New York
No. 02RU5034752
Qualified in New York County
Commission Expires Oct. 17, 19*98*