

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Ronald J. Abbott

94-01322

Name of Respondent

PaineWebber Incorporated

REPRESENTATION

For Claimant: Ronald J. Abbott ("Abbott") was represented by Susan Murnane, Esq. of Chirco, Herrinton, Runstadler & Thomas, located in Troy, Michigan.

For Respondent: PaineWebber Incorporated ("PaineWebber") was represented by Michael P. Coakley, Esq. of Miller, Canfield, Paddock & Stone, P.C., located in Detroit, Michigan.

CASE INFORMATION

Statement of Claim filed on: April 6, 1994.

Claimant's Submission Agreement signed on: March 29, 1994.

Statement of Answer filed by Respondent PaineWebber on: September 20, 1994.

Respondent PaineWebber's Submission Agreement signed on: September 20, 1994.

HEARING INFORMATION

Pre-Hearing Conference: May 16, 1995 for One (1) session.

Hearing Dates/Sessions: June 5, 1995 for Two (2) sessions;
June 6, 1995 for One (1) session;
June 7, 1995 for Two (2) sessions.

Hearing Location: Southfield, Michigan.

CASE SUMMARY

Claimant Abbott alleged that Respondent PaineWebber violated his civil rights under Michigan law by constructively discharging Abbott because of his age. Further, Abbott alleged that PaineWebber breached its employment contract with Abbott and tortiously interfered with Abbott's business relationship with his customers. Abbott specifically alleged that:

1. In the summer of 1988, PaineWebber induced Abbott to join PaineWebber by making various promises. These promises included the full home office support and Abbott's choice of office. Abbott began employment with PaineWebber in January of 1989, bringing to PaineWebber about \$5,000,000.00 in client assets;
2. In October of 1990, PaineWebber's Branch Manager sent letters to Abbott's customers, without Abbott's knowledge, implying that Abbott was mishandling the accounts. These letters undermined Abbott's relationship with his clients;
3. In January of 1991, PaineWebber evicted Abbott from his office in favor of a younger employee. Abbott's move to a smaller office gave his clients the impression that PaineWebber had lost confidence in Abbott;
4. In addition, PaineWebber failed to provide the promised local research or support; and
5. As a result of these and other wrongful actions, Abbott was compelled to resign from his employment with PaineWebber and suffered financial loss.

Respondent PaineWebber denied the material allegations of the Statement of Claim, alleging that Abbott voluntarily terminated his employment with PaineWebber. Further, PaineWebber asserted its actions were in accordance with the policies of its office. In addition, PaineWebber asserted several affirmative defenses, which included:

1. Claimant failed to state a cause of action;
2. PaineWebber acted in good faith and without malice;
3. The claims are barred by the statute of limitations and the doctrines of ratification and affirmance; and
4. The alleged injuries resulted from the Claimant's own conduct.

RELIEF REQUESTED

Claimant Abbott requested an entry of an award against Respondent PaineWebber in the amount of \$1,500,000.00, together with costs and attorneys' fees.

Respondent PaineWebber requested that the Statement of Claim be dismissed in its entirety, and that costs and attorneys' fees be assessed against Claimant.

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 originals remain on file with the NASD.

AWARD

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

1. The Statement of Claim is dismissed with prejudice and denied in its entirety;
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
3. Any relief not specifically awarded is hereby denied.

OTHER COSTS

The NASD shall retain the \$1,000.00 postponement fee paid by Respondent PaineWebber Incorporated.

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed: One (1) pre-hearing conference x \$300.00 = \$300.00; Five (5) hearing sessions x \$1,000.00 = \$5,000.00; Total Forum Fees = \$5,300.00.

The National Association of Securities Dealers, Inc. shall retain the \$500.00 non-refundable filing fee and the \$1,000.00 hearing session deposit previously deposited by Claimant Ronald J. Abbott. In addition, Claimant Ronald J. Abbott is liable for and shall pay to the NASD the sum of \$1,650.00 as forum fees. Respondent, PaineWebber, Inc. is liable for and shall pay to the NASD the sum of \$2,650.00 as forum fees. Furthermore, Respondent PaineWebber, Inc. is liable for and shall pay to the NASD the sum of \$200.00 as the surcharge due pursuant to Section 45 of the NASD Code of Arbitration Procedure.

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

Concurring Arbitrators' Signatures

Name

Date:

/s/ Robert J. Scafuri, Esq.

August 10, 1995

Robert J. Scafuri, Esq.

Public Arbitrator

Chairperson

/s/ Michael J. Meeusen

August 21, 1995

Michael J. Meeusen

Public Arbitrator

/s/ Robert Shiffra, Esq.

August 14, 1995

Robert Shiffra, Esq.

Industry Arbitrator

For NASD Use Only

Date of Decision: August 21, 1995