

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Barnett Securities, Inc.

Case No. 94-02084

Name of Respondents

PaineWebber, Inc.
Thad Kopec
Pat Hill
Patrick Cress

REPRESENTATION

For Claimant, Barnett Securities, Inc. ("Barnett"): Peter W. Homer, Esq. of Greer, Homer & Bonner, P.A. Miami, Florida and C. Daniel Rice of Mahoney Adams & Criser, P.A., Jacksonville, Florida.

For Respondent, PaineWebber, Inc. ("PaineWebber"), Thad Kopec ("Kopec"), Pat Hill ("Hill"), Patrick Cress ("Cress"): Curtis Carlson, Esq. of Carlson & Bales, P.A., Miami, Florida.

CASE INFORMATION

Statement of Claim filed: June 2, 1994. Claimant's Submission Agreement signed on: June 1, 1994.

Statement of Answer filed by Respondent on: September 7, 1994.
Respondent's Submission Agreements signed on: June 16, 1994.

HEARING INFORMATION

On September 2 and 8, 1994; and October 18 and 19, 1994; and, November 21, 1994; in Fort Lauderdale, Florida, Pre-Hearing Conferences lasting five (5) sessions were conducted (via telephone conference call) with an arbitrator.

On September 12, 13, 14, 16, 1994; October 6, 7, 8, 9, 21, 22, 23; and, December 4 and 5, 1994, in Tampa, Florida, hearings lasting 35 sessions were conducted.

CASE SUMMARY

Claimant alleged that PaineWebber executed a raid on Barnett Securities branch in Marion County, Florida. The Claimant also alleged that PaineWebber paid excessive up-front bonuses to Kopec and Hill, the only two brokers at the branch, based on the trailing twelve of fourteen months and an expectation that they would transfer the bulk of the Kopec and Hill assets under management at Barnett Securities to PaineWebber. The Claimant further alleged that PaineWebber gave a bonus to Cress, a registered sales assistant at Barnett Securities, to come over to PaineWebber. The Claimant further alleged that PaineWebber induced Kopec, Hill, and Cress to steal alleged confidential information belonging to Barnett Securities, specifically a list of customers and their account statements; and, PaineWebber allegedly used that information to its own benefit, specifically to successfully solicit long-time customers with account relationships exceeding twenty five million dollars.

Barnett Securities asserted claims for conversion and civil theft under Chapter 812, Florida Statutes (Count I), wrongful misappropriation of trade secrets under Chapter 688, Florida Statutes (Count II), breach of contract by Kopec, Hill, and Cress (Count III), violation of industry customs and practices (Count IV), and injunctive relief (Count V).

The Respondents filed an Answer on September 7, 1994, and denied all allegations of wrongdoing. The Respondents requested that the Panel dismiss Barnett Securities' Claim in its entirety.

The Respondents filed a Counterclaim on September 7, 1994, alleging false statements as to public statements supposedly made about them and with respect to Barnett Securities' filing of form U-5s for Kopec, Hill and, Cress.

The Claimant filed a Supplemental to its Statement of Claim alleging raiding and unfair competition against PaineWebber.

The Respondents filed an Answer to the Supplemental Statement of Claim on September 26, 1994, and requested that the panel dismiss the Supplemental Statement of Claim.

RELIEF REQUESTED

- 1) A permanent injunction against PaineWebber that provides the following relief:
 - a) PaineWebber and any of its employees, officers, or representatives are enjoined from using, disclosing or transmitting confidential information contained

in the materials and records of Barnett Securities. "Confidential information" means any documents or computer database information taken from Barnett Securities including, but not limited to, customer lists, customer account statements, account numbers, Social Security numbers, and mutual fund statements.

b) PaineWebber and any of its employees, officers or representatives are enjoined from soliciting customers of Barnett Securities through the use of any of the materials listed in Paragraph (a) above, or any materials derived directly or indirectly from those documents.

c) Customers remain free to provide their confidential financial information and investment business to the financial services firm(s) of their choice, and said customers are free to do business with the brokerage firm(s) or broker of their choice.

2) A Permanent injunction, with no time limit, enjoining PaineWebber from entering Barnett Securities' offices for the purpose of recruiting employees of Barnett Securities or gaining knowledge of customer assets or business at Barnett Securities, and a separate injunction directing that PaineWebber cease all recruiting of Barnett Securities' employees through January 1, 1996.

3) An award of compensatory damages to Barnett Securities for damages resulting from PaineWebber's raiding of Barnett Securities' Marion County branch, and require PaineWebber to pay that sum to Barnett Securities.

4) An award of compensatory damages to Barnett Securities to the extent PaineWebber has been enriched by its wrongful acts, and the trebling of any such award pursuant to Section 772.11 Florida Statutes (to the extent the Panel finds theft), or the doubling of any such award pursuant to Section 688.004 Florida Statutes (to the extent the Panel finds willful and malicious misappropriation).

5) An award to Barnett Securities of the costs it incurred in connection with this proceeding including, but not limited to, filing fees, all session fees, arbitrator expenses, court reporter costs, and witness and expert witness fees, and require PaineWebber to pay that sum to Barnett Securities.

6) An award of punitive damages to Barnett Securities for PaineWebber's conduct in raiding Barnett Securities' Marion County branch and theft of confidential information and misappropriation of trade secrets belonging to Barnett Securities, and require PaineWebber to pay that sum to Barnett Securities.

7) A direction from the Panel that Barnett Securities is entitled to have the Federal Court determine Barnett Securities' entitlement to attorneys' fees to be paid by PaineWebber -and a decision from the panel sending the issue to the Court to determine the amount of fees.

Respondents requested dismissal of both the Claim and Supplemental Claim in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

The Arbitration Panel sua sponte dismissed all claims against Mr. Cress during the proceeding on October 7, 1994. The Panel also sua sponte dismissed the claims against Kopec and Hill during the proceedings on December 4, 1994. With respect to the Respondents Counterclaim the Panel found no entitlement to compensatory or punitive damages or any other form of relief, except the Panel directed the filing of amended U-5s disclosing the dismissal of claims against these individuals.

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. A permanent injunction against PaineWebber and any of its employees, officers or representatives from using, disclosing or transmitting confidential information contained in the materials and records of Barnett Securities that originated from any Barnett Bank records including, but not limited to checking and savings account information, mortgage information, certificates of deposit information or any other information that is proprietary to the bank. This injunction shall apply to all bank proprietary information, whether or not obtained as a result of shared computer data bases, shared customer information between the bank and the brokerage subsidiary, and any and all confidential bank information the bank submitted to the brokerage subsidiary for purposes of soliciting bank customers to use the services of the brokerage subsidiary. This

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Award Cont.

injunction shall not apply to copies of Barnett Securities account statements that Messrs, Kopec, Hill and Cress, took with them upon leaving the employ of Barnett Securities.

2. A permanent injunction, with no time limit, enjoining PaineWebber from entering Barnett Securities' offices for the purposes of recruiting employees of Barnett Securities or gaining knowledge of customer assets or business at Barnett Securities unless agreed to by both parties.

3. An award of \$50,000.00 compensatory damages to Barnett Securities for damages resulting from PaineWebber's raiding of Barnett Securities' Marion County branch, and require PaineWebber to pay that sum to Barnett securities.

4. All other Claims against the Respondents are hereby dismissed.

OTHER COSTS

Other than as provided below the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$54,000.00 (five pre-hearing conferences x \$300.00 plus 35 hearing sessions x \$1,500.00 per session).

Claimant is hereby assessed \$27,000.00 for which the NASD shall retain the previously deposited hearing sessions deposits of \$20,550.00 in partial satisfaction thereof leaving a balance due of \$6,450.00 payable to the National Association of Securities Dealers.

The NASD shall retain the Claimants previously paid \$2,500.00 expedited hearing fee, \$200.00 Section 45 surcharge and the \$500.00 non-refundable filing fee.

Respondent, PaineWebber, is hereby assessed \$27,000.00 payable to the NASD.

Respondent, PaineWebber, shall pay the \$500.00 non-refundable filing fee for the counter-claim payable to the NASD.

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Forum Fees Cont.

The NASD shall retain the \$2,500.00 expedited fee and the \$200.00 Section 45 surcharge previously paid by Respondent, PaineWebber.

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

Concurring Arbitrators' Signatures

Name	Public/Industry
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<u> /s/ </u> Andrew Fellios	Industry
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<u> /s/ </u> Kjell W. Pettersen	Industry
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<u> /s/ </u> Jeffrey R. Edwards, Esq.	Industry
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Date of Decision: February 1, 1995