

## **NASD AWARD**

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between

PaineWebber, Inc.

Claimant

NASD Arbitration

v.

No. 94-02298

Jay R. Rice

Respondent

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### **REPRESENTATION OF PARTIES**

PaineWebber, Inc. ("Claimant") was represented by Alice K. Jump, Esq., PaineWebber, Inc., Weehawken, New Jersey.

Jay R. Rice ("Respondent") was represented by William D. Nelson, Esq., Robinson, Waters, O'Dorsio & Rapson, Denver, Colorado.

### **CASE INFORMATION**

Claimant's Statement of Claim was filed on or about June 16, 1994. Claimant's Submission Agreement was signed on June 13, 1994.

Respondent Jay R. Rice's Statement of Answer was filed on or about September 6, 1994. The Submission Agreement of Jay R. Rice was signed on September 6, 1994.

### **HEARING INFORMATION**

The hearing was held on February 20, 1996 in Salt Lake City, Utah for a total of two sessions.

### **CASE SUMMARY**

Claimant alleged that the Respondent breached the terms of the Advanced Compensation Agreement (ACA), a note forgivable over a set period of time. The Claimant argued that by violating the terms of the ACA and leaving the employ of the Claimant prior to the expiration of the ACA the Respondent owed the amount remaining on the ACA. Claimant also alleged that prior and subsequent to the Respondent's resignation there were several complaints on accounts handled by the Respondent where wrongful conduct resulted in amounts paid by the Claimant in settlements. Claimant argues that the Respondent should indemnify Claimant for those settlements.

Respondent denied the allegations set forth in the Statement of Claim. Respondents specifically argued that with respect to the ACA, the Respondent generated enough commissions for the Claimant to offset any amount owing on the ACA. The Respondent also argued that by settling any complaints unilaterally and without input from the Respondent the Claimant has deprived itself of meritorious defenses which may have reduced or eliminated any amount paid by the Claimant in settlements. Respondent further argued that the Claimant solicited some of the complaints in an attempt to discredit the Respondent.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$106,332.87. This represents a request of \$8,381.25 on the Advanced Compensation Agreement, and a request of \$97,951.62 for the settlements paid by the Claimant.

Respondent requested that the claim asserted against him be denied in its entirety.

### **OTHER ISSUES CONSIDERED & DECIDED**

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondent Jay R. Rice did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to §12 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains on file with the NASD.

### **AWARD**

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

1. Each and every claim of the Claimant is denied with respect to all claims for contribution to any settlements made by PaineWebber, Inc. on accounts handled by Jay R. Rice;
2. Respondent Jay R. Rice is liable and shall pay to PaineWebber, Inc. the sum of \$9,947.25, which represents \$8,381.25 on the Advanced Compensation Agreement plus \$1,566.00 in interest;
3. The parties shall each bear their respective costs including attorney's fees.

### **FORUM FEES**

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were 2 sessions x \$750 = \$1500 in forum fees. Pursuant to §43(b) of the NASD Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less. Pursuant to §43(c) of the Code of Arbitration Procedure, the parties shall divide the forum fees 50%-50%.

**Total Fees**

2 Hearing Sessions @ \$750.00 =	<u>\$1500.00</u>
<b>Total</b>	<b>\$1500.00</b>

Claimant's 1/2 share	\$ 750.00
Claimant's credit for deposit	<u>\$ 750.00</u>
Claimant's balance	\$ -0.00-

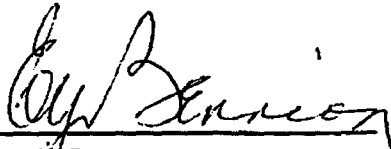
Respondent's 1/2 share	\$ 750.00
Respondent's credit for deposit	<u>\$ -0.00-</u>
Respondent's Balance	\$ 750.00

Pursuant to §43(c) of the Code, the NASD shall **retain** the non-refundable filing fee in the amount of \$500 and shall **retain** as forum fees the hearing session deposit in the amount of \$750 previously deposited with the NASD by the Claimant PaineWebber, Inc..

Pursuant to §45 of the Code, the NASD shall **retain** the member surcharge fee in the amount of \$200 previously paid by PaineWebber, Inc..

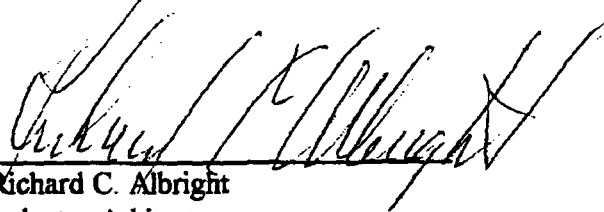
The NASD shall retain postponement fees due from the parties.

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

  
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E.Y. Bennion  
Industry Arbitrator, Presiding Chair

Dated:

4/2/96

  
Richard C. Albright  
Industry Arbitrator

Dated:

Nov 23/96

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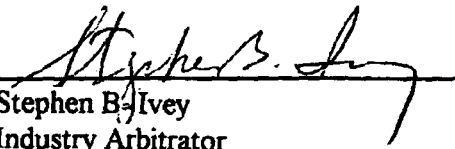
Stephen B. Ivey  
Industry Arbitrator

Dated:

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Richard C. Albright  
Industry Arbitrator

  
Stephen B. Ivey  
Industry Arbitrator

3/21/96

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