

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Cash O. Davenport,
Claimant,

v.

No. 95-00107

PaineWebber Incorporated,
Respondent.

REPRESENTATION OF PARTIES

Cash O. Davenport ("Claimant") was represented by Joseph D. Shepard, III, Esq., of Carnahan , Evans, Cantwell & Brown, P.C., Springfield, Missouri.

PaineWebber Incorporated ("Respondent") was represented by William R. Golden, Esq., of Kelley, Drye & Warren, New York, New York.

CASE INFORMATION

Claimant Statement of Claim was filed on or about . Claimant Submission Agreement was signed on

Respondent Statement of Answer was filed on or about . Respondent Submission Agreement of was signed on

HEARING INFORMATION

A pre-hearing conference was held on March 18, 1996 for one (1) session.

The hearing was held on June 11 and 12, 1996 for two (2) sessions each day, in St. Louis, Missouri for a total of four (4) sessions.

CASE SUMMARY

Claimant alleged that Respondent: violated the Securities and Exchange Act of 1934, Section 10b and Rule 10b-5; was negligent in dealing with Claimant; committed unauthorized trading; breached its fiduciary duty to the Claimant; committed fraud in its dealings with Claimant; and violated the

Missouri Uniform Sales Act, Section 409.411. The allegations arose out of transactions in securities more fully presented at the hearing in this matter

Respondent denied the allegations set forth in the Statement of Claim. Respondent asserted the following affirmative defenses: Claimant's claims are barred in whole or in part by the applicable statute(s) of limitations.; Claimant failed to state a claim upon which relief can be granted; Respondent acted in good faith and did not knowingly or intentionally violate any of the laws alleged; Claimant failed to mitigate his damages; Claimant approved, authorized, participated in and ratified the acts and transactions complained of and upon which recovery is sought and Claimant is, accordingly, precluded from recovery herein; Claimant's claims are barred by the doctrine of laches; the losses alleged by Claimant were proximately caused by his own conduct or negligence and, therefore, Claimant is precluded from recovery herein; Claimant received written confirmations and statements advising him to communicate in writing with Respondent if he objected to any activity in his account and did not complain at any time, accordingly, Claimant failed to seasonably complain of or disaffirm the transactions complained of and Claimant is barred from asserting recovery for any of the alleged wrongful acts or omissions; assuming Claimant suffered damages, which is denied, such damages were caused or contributed to by persons, conditions, or events beyond the control of Respondent, who is not liable therefor; Claimant's claims are barred by the doctrines of waiver and estoppel; Claimant is not entitled to attorneys' fees as a matter of law; and Claimant is not entitled to punitive damages as a matter of law.

RELIEF REQUESTED

In Counts I through VII of his Statement of Claim, Claimant requested an award for damages between \$10,000 and \$30,000, interest and all costs of arbitration and court, including attorneys' fees and arbitrators' fees, filing fees and all other expenses, punitive damages in an amount sufficient to punish Respondent and deter others from like conduct, and such other and further relief as the arbitrators deemed proper under the circumstances.

Respondent requested that the claims asserted against it in the Statement of Claim filed in this proceeding be denied, with costs assessed against the Claimant.

OTHER ISSUES CONSIDERED & DECIDED

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 arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

Upon evidence adduced during the hearing of the above styled NASD matter in controversy, and following receipt and review of the timely filed Closing Argument and Brief of Claimant and Post Hearing Memorandum of Respondent, it is the decision/award of the undersigned sole Arbitrator of this Matter in Controversy that all claims of Claimant, Cash O. Davenport, Counts I through VII inclusive, be and are hereby DENIED. Costs of the proceeding are hereby assessed against the Claimant, Cash O. Davenport.

Each party shall bear its own costs and expenses, including attorneys' fees, incurred in connection with this arbitration.

FORUM FEES

Forum fees are calculated at the rate of \$300 per hearing session and \$300 for each pre-hearing conference, if any. There were four (4) regular sessions x \$300 and one (1) pre-hearing conference session x \$300 = \$1,500 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, the NASD shall **retain** the non-refundable filing fee in the amount of \$100 and shall **retain** as forum fees the hearing session deposit in the amount of \$300 previously deposited with the NASD by the Claimant.

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

Additional forum fees in the amount of \$1,200 are assessed against the Claimant.

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

Dated:

Albert Shawe Watkins
Albert Shawe Watkins
Public Arbitrator, Presiding Chair

/s/

July 11, 1996