

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION

In the Matter of the Arbitration Between

Name of Claimants

Lawrence C. Miller
Eloise Miller

95-00134

Name of Respondents

PaineWebber, Inc.
Clarence Catallo, Jr.

REPRESENTATION

Claimants Lawrence C. Miller and Eloise Miller ("Claimants") were represented in part by Dennis Concilla, Esq., Columbus, OH and appeared pro se for the remainder of the hearing.

Respondents PaineWebber Incorporated ("PaineWebber") and Clarence Catallo ("Catallo") were represented by Michael B. Roche, Esq. and James L. Komie, Esq. of Schuyler, Roche & Zwirner, Chicago, Illinois.

CASE INFORMATION

The Statement of Claim was filed January 10, 1995.

Claimants' Uniform Submission Agreement was signed December 27, 1994.

The Joint Statement of Answer of PaineWebber and Catallo (collectively "Respondents") was filed February 14, 1995.

PaineWebber's Uniform Submission Agreement was signed February 2, 1995.

Catallo's Uniform Submission Agreement was signed February 3, 1995.

HEARING INFORMATION

Prehearing Date/Sessions: April 26, 1996/one session

Hearing Dates/Sessions: May 29, 1996/two sessions
May 30, 1996/two sessions
May 31, 1996/two sessions

Hearing Location: Doubletree Hotel
Columbus, OH

Hearing Dates/Sessions: August 29, 1996/two sessions
August 30, 1996/two sessions
September 4, 1996/two sessions
September 5, 1996/two sessions
September 12, 1996/two sessions

Hearing Location: Columbus Bar Association
Columbus, OH

CASE SUMMARY

Claimants alleged that their termination from PaineWebber was based on discrimination and that Respondents made defamatory remarks about Claimants. Claimants alleged that Lawrence Miller ("Mr. Miller") became Branch Manager of PaineWebber's Columbus, Ohio office in July 1987. Claimants alleged that Catallo demoted Mr. Miller on December 29, 1993 based on age discrimination. Claimants alleged that Mr. Miller was fifty-one (51) years of age, he was qualified to do the job, he was demoted for no legitimate reason and replaced by someone ten years younger than Mr. Miller. Claimants alleged that Mr. Miller's replacement was not held to the same standard of production as Mr. Miller had been. Claimants alleged that Respondents terminated Mr. Miller in retaliation because Catallo thought Mr. Miller had "bad mouthed" Catallo. Claimants alleged that Respondents failed to properly compensate Mr. Miller for bonuses based on performance. Claimants alleged that Mr. Miller's business performance was superior through the six and one-half years he served as Branch Manager. Claimants alleged that Eloise Miller ("Mrs. Miller") was unfairly laid-off based on sex discrimination. Claimants alleged that while PaineWebber insisted that a nepotism policy in place required that Mrs. Miller leave her employment, PaineWebber has sixteen other married couples working together. Claimants alleged that Respondents have applied their nepotism policy in a discriminatory manner. Claimants alleged that Catallo made inappropriate and defamatory remarks about Claimants to other PaineWebber employees causing irrevocable damage to their personal and professional reputations.

In their Answer to Statement of Claim, Respondents PaineWebber and Catallo denied the allegations of wrong doing contained in the Statement of Claim. Respondents admitted that Claimants were employed by PaineWebber. Respondents admitted that Claimants became married to each other while they both were employed by PaineWebber. Respondents also admitted that certain actions were taken by PaineWebber with regard to Claimants' jobs. However, Respondents maintained that Mr. Miller voluntarily resigned from PaineWebber to join a competitor firm and was not terminated. By way of affirmative defense, Respondents maintained, among other things, that the bonuses claimed by Mr. Miller were discretionary and not guaranteed. Respondents maintained that any statements made by Catallo about Claimants were true and privileged, that Claimants' defamation claim was barred by the applicable statute of limitations. Respondents maintained that Claimants failed to mitigate their damages.

RELIEF REQUESTED

Claimants requested actual damages in the amount of \$232,238.00; compensatory damages in the amount of \$360,000.00; and punitive damages in the amount of \$696,714.00.

Respondents requested that the claim be dismissed in its entirety and that forum fees be assessed against Claimants.

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 Regulation.

The Panel considered Claimants' Motion to compel production of a 1992 employee survey for the Columbus, Ohio PaineWebber branch and denied the Motion based on the Respondents' representation that no such document exists.

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. That Respondent PaineWebber is liable to and shall pay to Claimant Lawrence Miller the sum of \$40,000.00 for the breach of contract claim. All remaining claims are denied.
2. That the request for punitive damages is denied.
3. That each party shall bear its own costs and expenses.
4. That any relief not specifically addressed herein is denied.

FORUM FEES

Pursuant to Rule 10205(k) of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

1 Prehearing session x \$300.00 = \$300.00

16 sessions x \$1,000.00 = \$16,000.00

TOTAL FORUM FEES = \$16,300.00

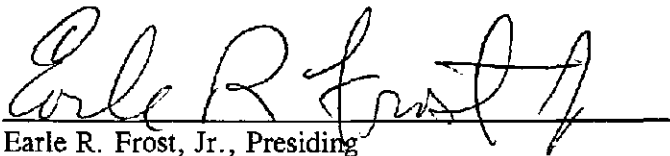
Forum Fees are assessed at fifty percent (50%) to Claimant Lawrence Miller and fifty percent (50) to Respondent PaineWebber. Claimant shall receive credit for the \$1,000.00 hearing session deposit previously submitted to the NASD Regulation, leaving a net assessment due of \$7,150.00. Respondent PaineWebber has a net assessment due of \$8,150.00.

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

DATE

CONCURRING ARBITRATORS' SIGNATURES

9/24/96



Earle R. Frost, Jr., Presiding
Public Arbitrator

Benjamin B. Segel
Public Arbitrator

Leslie J. Filson
Industry Arbitrator

Date Decision Served by NASD Regulation: September 30, 1996

DATE

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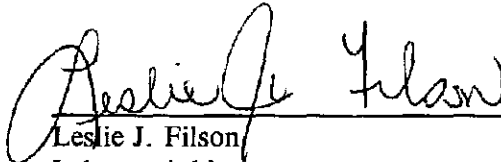
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10-1-96



Leslie J. Filson
Industry Arbitrator

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