

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

PaineWebber, Incorporated

and

95-00935

Name of Respondent

Ernest D. Olson

REPRESENTATION OF PARTIES

PaineWebber, Inc. ("Claimant") was represented by James L. Komie, Esq. of Schuyler, Roche & Zwirner located in Chicago, IL.

Ernest D. Olson ("Respondent") was represented by Daniel P. Johnson, Esq., Sole Practitioner, located in Sioux Falls, SD.

CASE INFORMATION

The Statement of Claim was filed on or about February 22, 1995.

The Submission Agreement of Claimant, PaineWebber, Inc. was signed on February 22, 1995 by Joseph Generelli, Esq., First Vice President.

The Statement of Answer was filed on or about March 16, 1995.

The Submission Agreement of Respondent, Ernest D. Olson was signed on March 16, 1995.

HEARING INFORMATION

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

The hearing was held on March 20, 1996 in Omaha, NE before three arbitrators for two (2) sessions.

CASE SUMMARY

In the Statement of Claim, PaineWebber, Inc. ("PaineWebber") alleged that Ernest D. Olson ("Olson") was hired as an Investment Executive in its Sioux Falls, SD office on or about September 29, 1991. According to the Claim, Olson was advanced the sum of \$107,037.00 by PaineWebber and signed a promissory note (the "Note") to PaineWebber for the same amount on or about October 1, 1991. As alleged, the Note provided that Olson's indebtedness would be forgiven in four equal annual installments of \$26,759.25, provided certain conditions were met and if Olson paid the taxes due, but that if Olson's employment with PaineWebber were terminated either voluntarily or involuntarily by Olson for any reason prior to the due date in the Note, then PaineWebber may declare the Note immediately due and payable. PaineWebber claimed that Olson also signed on or about October 10, 1991 a form acknowledging his obligation to repay the unforgiven portion of the Note if his employment was terminated. Olson allegedly voluntarily resigned from PaineWebber on September 16, 1994 and has retired from active employment. PaineWebber alleged that Olson owed PaineWebber \$53,518.50 for the unforgiven portion of the Note and \$5,251.10 for the tax balance. Despite demand, Olson allegedly has failed and refused to pay his debt.

In his Statement of Answer, Ernest D. Olson denied the allegations contained in the Statement of Claim. Olson alleged that PaineWebber breached a contract it had with him to furnish him with a registered assistant at all times. Pursuant to the parties' alleged agreement, Olson and his son, also employed by Claimant, shared an assistant until that assistant left employment with PaineWebber on or about September 15, 1995. Olson contended that PaineWebber arbitrarily and purposely refused to fill the assistant position for Olson and his son. Olson further contended that as a result of the breach of contract it became impossible for Respondent to continue employment as an investment executive.

RELIEF REQUESTED

Claimant, PaineWebber, Inc. requested an award in the amount of \$58,769.60 in actual damages as well as interest, costs and attorneys' fees.

Respondent, Ernest D. Olson requested that the claim be dismissed in its entirety and that he be awarded costs and attorneys' fees.

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 original(s) 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. Respondent, Ernest D. Olson is liable for and shall pay to the Claimant, PaineWebber, Inc. the sum of \$26,758.00 in actual damages;
2. Respondent, Ernest D. Olson is liable for and shall pay to the Claimant, PaineWebber, Inc. the sum of \$3,720.00 in interest;
3. All relief not specifically granted is hereby denied in its entirety; and
4. The parties shall bear their own costs including attorneys' fees except for those specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$600.00 per hearing session and \$300.00 for each pre-hearing conference. There were two (2) hearing sessions x \$600.00 plus one (1) pre-hearing session x \$300.00 = \$1,500.00 in forum fees. Pursuant to Section 44(b) of the 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 Section 44(c) of the Code, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$500.00, the non-refundable surcharge of \$300.00 imposed pursuant to Section 45 and shall retain as forum fees the hearing session deposit in the amount of \$500.00 previously submitted to the NASD by the Claimant, PaineWebber, Inc.

Respondent, Ernest D. Olson shall pay to Claimant, PaineWebber the sum of \$1,300.00 as reimbursement. Respondent, Ernest D. Olson is liable for and shall pay to the NASD the sum of \$1,000.00 in additional forum fees. The NASD shall retain postponement fees in the amount of \$600.00 previously deposited with the NASD by the Respondent, Ernest D. Olson.

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

Signatures

Dated

John P. Miller, Esq.
John P. Miller, Esq.
Public Arbitrator, Presiding Chair

April 1, 1996

Larry R. Trussell
Larry R. Trussell
Public Arbitrator, Panelist

April 2, 1996

Bruce C. Young
Bruce C. Young
Industry Arbitrator

April 1, 1996

Date served by the NASD: April 3, 1996