

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

PaineWebber, Incorporated,
Claimant,

v.

Elliott H. Blonde,
Respondent.

and

No. 95-00962

Elliott H. Blonde,
Counterclaimant,

v.

PaineWebber, Incorporated,
Counterrespondent.

REPRESENTATION OF PARTIES

PaineWebber, Inc. ("Claimant") was represented by W. Charles Thomson, Esq., of Gallagher & Kennedy, Phoenix, Arizona.

Elliott H. Blonde ("Blonde") was represented by Frank Lewis, Esq., of Begam, Lewis, Marks & Wolfe, Phoenix, Arizona.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about February 23, 1995. Claimant's Submission Agreement was signed on February 9, 1995. Claimant's Reply to the Amended Counterclaim was filed on or about April 26, 1996.

Blonde's Statement of Answer and Counterclaim was filed on or about April 11, 1995. Blonde's Submission Agreement was signed on April 16, 1995. Blonde's Amended Answer and Counterclaim was filed on or about April 11, 1996.

HEARING INFORMATION

A telephonic pre-hearing conference was held on April 9, 1996 for a total of one (1) session.

The hearing was held on April 10, 1996 for two (2) sessions, and April 30, 1996 for two (2) sessions in Scottsdale, Arizona for a total of four (4) sessions.

CASE SUMMARY

Claimant sought to recover money allegedly owed by Blonde for defaults under the terms of two (2) Promissory Notes. Claimant further stated that: In connection with Blonde's employment, on or about October 23, 1991, Claimant advanced Blonde \$89,536 and Blonde signed a Promissory Note ("Note 1") to Claimant in that amount; the terms of Note 1 provided in part that Note 1 would be forgiven in five equal annual installments, and if Blonde's employment were terminated for any reason, then Claimant could, at its option, declare Note 1 immediately due and payable; on or about December 31, 1992, Claimant advanced Blonde the sum of \$41,560 and Blonde signed a second Promissory Note ("Note 2"); the terms of Note 2 provided in part that Blonde's indebtedness would be forgiven in four equal annual installments, and if Blonde's employment were terminated for any reason, then Claimant could, at its option, declare Note 2 immediately due and payable; on or about September 29, 1994 Blonde voluntarily resigned to work with another brokerage firm; Blonde's termination triggered a debt to Claimant; Claimant attempted, unsuccessfully, to resolve the matter amicably with Blonde, who has failed and refused to honor his obligation to pay the debt; and under Notes 1 and 2, Blonde agreed to pay all indebtedness upon demand, to pay interest, costs and expenses of collection.

Blonde denied the allegations set forth in the Statement of Claim. Blonde specifically stated that: Based on industry practices, he thought Note 1 would be funded within a few days of commencement of work with Claimant; based on the conduct of Claimant, the payment was delayed because Claimant asserted that the forgiveness of the loan would take place over 60 months rather than the 48 months that had been promised by Claimant; at the time of notice of the changed conditions, Blonde was under duress because he could not return to Dean Witter, and had to accede to Claimant's breach of the agreement that had been previously made; Claimant has made demands on Note 1 in excess of what is due; had Blonde known he had the choice of three, four or five years on the forgiveness on Note 1, Blonde would have chosen three years; in December of 1992, Blonde became entitled to a bonus of \$41,560 as a result of the agreement with Claimant concerning his back end bonus; in December of 1992, Blonde was advised that Note 2 was not a bonus, as promised, but rather another loan to be forgiven over 48 months; in order to receive the funds to which he was entitled, Blonde was forced to sign Note 2 contrary to the agreement that had been made before his hiring; and he had been advised that other registered representatives were given back end bonuses that were not repayable.

Blonde also asserted a Counterclaim. In the Counterclaim, Blonde alleged that: Claimant failed to follow up on its promise to provide Blonde with a competent, knowledgeable sales assistant; that Blonde was provided with a sales assistant who could not develop a rapport with clients because she did not know the business, and could not write English prose; that despite all of the complaints from Blonde and customers about the assistant, it took Claimant 18 months to remove the assistant to the detriment of Blonde's business; prior to accepting employment with Claimant, Blonde was promised that he would have no problems with position limits in his trading; Blonde had substantial problems with position limits and that Claimant's compliance was not understanding and reasonable, and Claimant was never diligent in resolving the problems; as a result of the position limit problem, Blonde was unable to complete numerous trades in various accounts; as part of his compensation package, Blonde was to receive an accelerated payout equal to 45% of all commission dollars earned from October 1, 1991 to November 30, 1992; and Blonde's payout on a monthly basis did not equal 45% as previously agreed.

Claimant denied all of the allegations of the amended Counterclaim and further reasserted all of the allegations of the original Statement of Claim filed in this matter. In addition, Claimant also asserted the following affirmative defenses: The Statement of Claim failed to state a claim upon which relief can be granted; Claimant acted in good faith and did not knowingly or intentionally violate any of the laws alleged; Blonde's claims are barred by the doctrines of waiver, estoppel, unclean hands, laches, and ratification; Blonde's claims are barred by the applicable statute(s) of limitations; Blonde's alleged damages were proximately caused by his own conduct and negligence and he is therefore precluded from recovery herein; assuming that Blonde suffered any damages, which is denied, such damages were caused or contributed to by persons, conditions or events beyond the control of Claimant and Claimant is not liable therefor; and Blonde is not entitled to punitive damages as a matter of law.

RELIEF REQUESTED

In its Statement of Claim, Claimant requested entry of an award in its favor against Blonde in the amount of \$78,558.10, together with reasonable attorneys' fees, costs and NASD filing costs, as expressly allowed for in Notes 1 and 2. Claimant also requested that all Counterclaims asserted against it in this proceeding be dismissed with prejudice.

In his Statement of Answer, Blonde requested that the period of forgiveness of Note 1 be changed from five to three years and that Claimant take nothing on Note 2. In addition, Blonde requested, in his Counterclaim, an award of the following: Damages resulting from an incompetent sales assistant in an amount of \$75,000; damages from position limit problem of \$128,875; damages from an error charge that Blonde did not commit in an amount of \$1,000; and damages resulting from Blonde's accelerated payout shortfall in the amount of \$15,628 plus 10% per annum (total interest as of April 11, 1996 was \$6,198).

OTHER ISSUES CONSIDERED & DECIDED

At the hearing held on April 10, 1996, Blonde made an oral request to amend his Counterclaim. After hearing argument from the parties, and deliberation, the arbitrators granted the request, and allowed Blonde to file an amended Counterclaim. The amended Counterclaim, and Claimant's Answer thereto were made an addendum to Arbitrators Exhibit one.

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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

Claimant's claims relating the second Note are, and each of them, denied with prejudice. Blonde is liable for, and shall pay to the Claimant the sum of \$21,220 plus interest from June 1, 1996 at the rate of 10% per annum as satisfaction of its claims made under the first Note.

Blonde's Counterclaims for sales assistant damages, position limit damages, and error charge damages are, and each of them, denied with prejudice. Claimant is liable for, and shall and shall pay to Blonde the sum of \$18,337 plus interest at the rate of 10% per annum from June 1, 1996 as an award of damages relating to Blonde's claim for compensation error.

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

All claims/requests for relief not specifically set forth herein are, and each of them, denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$600 per hearing session and \$300 for each pre-hearing conference, if any. There were four (4) regular sessions x \$600 and one (1) pre-hearing session x \$300 = \$2,700 in forum fees. Pursuant to §44(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 §44(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 \$600 previously deposited with the NASD by the Claimant.

Pursuant to §44(c) of the Code, the NASD shall retain the non-refundable Counterclaim filing fee in the amount of \$500 and shall retain as forum fees the Counterclaim hearing session deposit in the amount of \$750 previously deposited with the NASD by Blonde.

Pursuant to §45 of the Code, the NASD shall retain the member surcharge fee in the amount of \$300 previously paid by the Claimant.

Additional forum fees in the amount of \$750 are assessed against the Claimant.

Additional forum fees in the amount of \$600 are assessed against Blonde.

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

Dated:

Jon A. Titus

/s/

May 22, 1996

Jon A. Titus

Industry Arbitrator, Presiding Chair

Louis R. Proyect

/s/

May 28, 1996

Louis R. Proyect

Industry Arbitrator

Leon G. Mackey

/s/

May 22, 1996

Leon G. Mackey

Industry Arbitrator