

NASD REGULATION, INC. AWARD

In the Matter of the Arbitration Between

Name of Claimant

PaineWebber, Inc.

95-00963

Name of Respondent

Todd W. Cowle

Consolidated with

In the Matter of the Arbitration Between

Name of Claimant

Edward Cowle

95-02419

Name of Respondent

PaineWebber, Inc.

REPRESENTATION

For PaineWebber, Inc. (Claimant in 95-00963 and Respondent in 95-02419) ("PaineWebber") appeared A. Inge Selden, III, Esq., of the firm Maynard, Cooper & Gale, PC, located in Birmingham, Alabama.

For Todd W. Cowle (Respondent in 95-00963) ("Todd Cowle") and Edward Cowle (Claimant in 95-02419) ("Edward Cowle"), collectively referred to as the "Cowles", appeared Michele Kahn, Esq., of the firm Sankel, Skurman & McCartin, LLP, located in New York, New York.

CASE INFORMATION

PaineWebber filed a Statement of Claim, for 95-00963, on: February 06, 1995.

PaineWebber filed a Reply to Counterclaim of Todd Cowle on: August 16, 1995.

PaineWebber filed a Statement of Answer, to 95-02419, on: August 16, 1995.

PaineWebber's Submission Agreement signed on: February 06, 1995.

Edward Cowle filed a Statement of Claim, for 95-02419, on: May 18, 1995.

Todd Cowle filed a Statement of Answer and Counter-Claim, for 95-00963, on: May 18, 1995.

Edward Cowle's Submission Agreement signed on: May 18, 1995.

Todd Cowle's Submission Agreement signed on: April 10, 1995.

HEARING INFORMATION

Pre-Hearing Conference:	July 8, 1996	One Session
	July 19, 1996	One Session
	November 13, 1996	One Session
Hearing Dates/Sessions:	June 9, 1997	Two Sessions
	June 10, 1997	Two Sessions
	July 10, 1997	Two Sessions
	July 11, 1997	Two Sessions
	September 24, 1997	Two Sessions
	September 25, 1997	Two Sessions
	October 8, 1997	Two Sessions
	October 9, 1997	Two Sessions

The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

CASE SUMMARY

PaineWebber, in their Statement of Claim, alleged that Todd Cowle was hired as an investment executive on August 19, 1992, and, in connection with the commencement of his employment on September 16, 1992, he was advanced the sum of \$489,706.00 in the form of an employee forgivable note. PaineWebber further alleged that under the terms of this note Todd Cowle's indebtedness would be forgiven in three annual installments of \$163,235.33 each, but that if Todd Cowle ceased to be employed by PaineWebber either voluntarily or involuntarily, PaineWebber had the option of making the note immediately due and payable. PaineWebber also alleged that, on November 8, 1994, Todd Cowle voluntarily resigned from PaineWebber leaving one-third of the note unforgiven. PaineWebber asserted that, on November 11, 1994, it sent a letter to Todd Cowle declaring the note immediately due and payable and demanding payment. PaineWebber further asserted that Todd Cowle is indebted to it for the outstanding balance on the note, as well as interest.

Todd Cowle, in his Statement of Answer, denied all allegations contained in PaineWebber's Statement of Claim. Todd Cowle maintained that he is not liable to PaineWebber for any sum. Todd Cowle further maintained that PaineWebber breached his employment agreement and is estopped from asserting its claim. Todd Cowle asserted that he had paid PaineWebber all amounts which he owed. Todd Cowle maintained that PaineWebber owes him significantly more than they claim he owed PaineWebber.

Todd Cowle, in his First Counter-Claim, asserted that from April 1992 until August 1992 he was actively recruited by PaineWebber. Todd Cowle further asserted that PaineWebber promised he would have better opportunities than he had at Bear Stearns, including analytical research availability and commissions on a retail basis (50% payout), provided that accounts brought to PaineWebber met certain criteria. Todd Cowle also asserted that despite these reassurances PaineWebber refused to provide analytical research for National Heritage Life Insurance ("National Heritage"), a major client, and therefore, National Heritage took its business to other brokers. Todd Cowle asserted that this represented a breach of his employment contract by PaineWebber and was the reason he was compelled to leave PaineWebber in November 1994. Todd Cowle, in his Second Counter-Claim, asserted that it was PaineWebber's intention to "steal" the account from him, and fraudulently induced him to enter into an employment contract in order to do so. Todd Cowle, in his Third Counter-Claim, asserted PaineWebber's actions tortiously interfered with his contractual and business relationship with National Heritage. Todd Cowle, in his Fourth Counter-Claim, asserted that PaineWebber wantonly and intentionally conspired to steal the National Heritage account.

Todd Cowle, in his Fifth Counter-Claim, asserted that he, his brother Edward Cowle, and Robert Steingut ("Steingut") entered into an agreement to become partners and share in the commissions generated by the Amalgamated Insurance Company ("Amalgamated"). Todd Cowle further asserted that, pursuant to this agreement, he and Edward Cowle would introduce Steingut to PaineWebber, and in the event that Steingut joined PaineWebber, they would help him bring the Amalgamated account with him. Todd Cowle also asserted that PaineWebber approved the agreement, hired Steingut, and Steingut brought the Amalgamated account with him. Todd Cowle alleged that the conditions of the account transfer were that PaineWebber would provide analytical research, Todd Cowle would be the salesman on the account, and commissions paid on a retail payment basis would be split between Todd Cowle, Edward Cowle, and Steingut. Todd Cowle further alleged that the Capital Markets Division refused to provide the analytical research, and that in August 1993, the account was moved to the Capital Markets Division without the approval of himself, or Edward Cowle. Todd Cowle also alleged that these actions constituted a breach of contract by PaineWebber. Todd Cowle, in his Sixth Counter-Claim, asserted that PaineWebber's actions tortiously interfered with his contractual and business relationship with Amalgamated.

Edward Cowle, in his Statement of Claim, alleged that he was actively recruited by PaineWebber from April 1992 until he joined the firm on June 26, 1992. Edward Cowle further alleged that PaineWebber promised he would have better opportunities than he had at Bear Stearns, including analytical research availability and commissions on a retail basis, provided that accounts brought to PaineWebber met certain criteria. Edward Cowle, in his first claim, asserted that despite these reassurances PaineWebber refused to provide analytical research for National Heritage Life Insurance ("National Heritage"), a major client, and therefore, National Heritage took its business to other brokers. Edward Cowle asserted that this represented a breach of his employment contract by PaineWebber and was the reason he was compelled to leave PaineWebber in October 1994. Edward Cowle, in his second claim, asserted that it was PaineWebber's intention to "steal" the account from him, and fraudulently induced him to enter into an employment contract in order to do so. Edward Cowle, in his third claim, asserted PaineWebber's actions tortiously interfered with his contractual and business relationship with National Heritage. Edward Cowle, in his fourth claim, asserted that PaineWebber wantonly and intentionally conspired to steal the National Heritage account.

Edward Cowle, in his fifth claim, asserted that he, his brother Todd Cowle, and Robert Steingut ("Steingut") entered into an agreement to become partners and share in the commissions generated by the Amalgamated Insurance Company ("Amalgamated"). Edward Cowle further asserted that pursuant to this agreement he and Todd Cowle would introduce Steingut to PaineWebber, and in the event that Steingut joined PaineWebber they would help him bring the Amalgamated account with him. Edward Cowle also asserted that PaineWebber approved the agreement, hired Steingut, and Steingut brought the Amalgamated account with him. Edward Cowle alleged that the conditions of the account transfer were that PaineWebber would provide analytical research, Todd Cowle would be the salesman on the account, and commissions paid on a retail payment basis would be split between Todd Cowle, Edward Cowle, and Steingut. Edward Cowle further alleged that the Capital Markets Division refused to provide the analytical research, and that in August 1993, the account was moved to the Capital Markets Division without the approval of himself, or Todd Cowle. Edward Cowle also alleged that these actions constituted a breach of contract by PaineWebber. Edward Cowle, in his sixth claim, asserted that PaineWebber's actions tortiously interfered with his contractual and business relationship with Amalgamated.

PaineWebber, in a combined answer to the Statement of Claim of Edward Cowle and the Counter-Claims of Todd Cowle, maintained that in 1994, National Heritage was taken over by the State of Delaware's Department of Insurance and that a Deputy Receiver was appointed, and therefore, the Cowles lost the opportunity to continue to do business with the company. PaineWebber further maintained that in 1993, National Heritage began to diversify its portfolio of the collateralized mortgage obligations ("CMO's")

and that during that time the CMO market underwent dramatic changes. PaineWebber also maintained that this is significant since the Cowles', while at Bear Stearns, had earned most of their commissions from National Heritage's CMO trades. PaineWebber stated that it could not provide analytical research for National Heritage due to the fact that it was developing a new analytical system which was not yet up and running. PaineWebber further stated that it continued to do business with National Heritage as one of many brokers used by the company to execute trades. PaineWebber also stated that they did not contribute to the loss of commissions of the Cowles' from National Heritage, and therefore, cannot be held liable for trying to "steal" the account or tortious interference of contract.

PaineWebber maintained that the Amalgamated account was opened with them due to the efforts of Steingut. PaineWebber further maintained that Steingut never entered into an agreement, either oral or written, with the Cowles stating that he would share the commissions generated from this account nor did PaineWebber approve such an agreement. PaineWebber also maintained that it was never obliged to provide analytical research for Amalgamated, nor was Todd Cowle the salesman for the account. PaineWebber stated that it did not "sabotage" the Cowles' relationship with Amalgamated since the account was not theirs and Amalgamated is still a client of PaineWebber. PaineWebber further stated that the Amalgamated account was opened as a Capital Markets account, and therefore, the approval of the Cowles' was not needed to make it so.

RELIEF REQUESTED

PaineWebber, Inc. requested from Todd Cowle damages in the amount of \$167,364.68 plus interest. PaineWebber, Inc. further requested that the counter-claims of Todd Cowle be dismissed, that the Statement of Claim by Edward Cowle be dismissed, and that they be awarded attorneys' fees, costs, and filing costs.

Todd Cowle requested in his counter-claim against PaineWebber:

- (a) on the first, second, and third counter-claims damages not less than \$3,000,000.00;
- (b) on the fourth counter-claim damages not less than \$3,000,000.00 plus punitive damages;
- (c) on the fifth and sixth counter-claims damages not less than \$1,000,000.00; and
- (d) any other relief that the panel deems just and proper.

Edward Cowle requested in his Statement of Claim:

- (a) on the first claim damages in excess of \$3,000,000.00;
- (b) on the second claim damages in excess of \$3,000,000.00;
- (c) on the third claim damages in excess of \$3,000,000.00;
- (d) on the fourth claim damages in excess of \$3,000,000.00;
- (e) on the fifth claim damages in excess of \$1,000,000.00; and
- (f) on the sixth claim damages in excess of \$1,000,000.00.

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 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:

1. Todd Cowle be and hereby is liable and shall pay PaineWebber, Inc. compensatory damages in the amount of \$223,866.06.
2. The panel found the jurisdiction to award attorneys' fees under the terms in the contract of the employee forgivable loan. Todd Cowle be and hereby is liable and shall pay PaineWebber, Inc. attorneys' fees in the amount of \$20,000.00.
3. All further requests for relief are hereby denied.

FORUM FEES

Pursuant to Rule 10205(c) of the NASD Regulation, Inc. Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$500.00 non-refundable filing fee paid by PaineWebber, the \$500.00 non-refundable filing fee paid by Edward Cowle and the \$500.00 non-refundable counter-claim filing fee paid by Todd Cowle and have assessed the following Forum Fees:

3 Pre-hearing conferences x \$300.00	=	\$ 900.00
12 Hearing sessions x \$1,500.00	=	\$18,000.00
Total Forum Fees	=	\$18,900.00

1. PaineWebber be and hereby is liable for the sum of \$9,450.00 representing one-half of the total forum fees assessed. PaineWebber deposited \$750.00 with the NASD and, therefore, is liable and shall pay the balance of \$8,700.00.
2. Todd Cowle be and hereby is liable for the sum of \$4,725.00 representing one-quarter of the total forum fees assessed. Todd Cowle deposited \$1,500.00 with the NASD and, therefore, is liable and shall pay the balance of \$3,225.00.
3. Edward Cowle be and hereby is liable for the sum of \$4,725.00 representing one-quarter of the total forum fees assessed. Todd Cowle deposited \$1,500.00 with the NASD and, therefore, is liable and shall pay the balance of \$3,225.00.
4. PaineWebber be and hereby is liable and shall pay to NASD Regulation, Inc. the sum of \$700.00, representing a \$350.00 Member Surcharge assessed in case #95-00963 and a \$350.00 Member Surcharge assessed in case #95-02419. PaineWebber deposited \$200.00 with the NASD, and therefore, is liable for the balance of \$500.00.

Fees are payable to NASD Regulation, Inc..

ARBITRATORS' SIGNATURES

I, Paul K. Barenholtz, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Paul K. Barenholtz, Esq.
Industry Arbitrator - Chairperson

I, Alvin Gallant, do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Alvin Gallant
Industry Arbitrator

I, Walter A. Kapuscinski, do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Walter A. Kapuscinski
Industry Arbitrator


Date of Decision: January 16, 1998

ARBITRATORS' SIGNATURES

I, Paul K. Barenholtz, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Paul K. Barenholtz, Esq.
Industry Arbitrator - Chairperson

I, Alvin Gallant, do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.


Alvin Gallant
Industry Arbitrator

I, Walter A. Kapuscinski, do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Walter A. Kapuscinski
Industry Arbitrator

Date of Decision: January 16, 1998

ARBITRATORS' SIGNATURES

I, Paul K. Barenholtz, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Paul K. Barenholtz, Esq.
Industry Arbitrator - Chairperson

I, Alvin Gallant, do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Alvin Gallant
Industry Arbitrator

I, Walter A. Kapuscinski, do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Walter A. Kapuscinski
Industry Arbitrator

Date of Decision: January 16, 1998