

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Paul I. Kleinberg

95-01475

Name of Respondents

PaineWebber, Inc.
George Keith

REPRESENTATION

For Claimant Paul I. Kleinberg ("Claimant"), appeared Gary A. Feder, Esq. of the Law Practices of J. B. Grossman, located in Fort Lauderdale, Florida.

For Respondents PaineWebber, Inc. ("Painewebber") and George Keith ("Keith"), collectively ("Respondents"), appeared Stephanie Morse-Shamosh, Esq. of PaineWebber, Inc. located in New York, New York.

CASE INFORMATION

Statement of Claim filed: March 22, 1995

Claimant's Submission Agreement signed on: March 21, 1995

Joint Statement of Answer filed by Respondents on: May 26, 1995

Respondent PaineWebber, Inc.'s Submission Agreement signed on: May 26, 1995

Respondent George Keith's Submission Agreement was signed but not dated.

HEARING INFORMATION

Hearing Dates/Sessions:

June 21, 1996	Two Sessions
June 20, 1996	Two Sessions
April 19, 1996	Two Sessions
April 18, 1996	Two Sessions

The hearings were held at the offices of the National Association of Securities Dealers, Inc. in New York, New York.

CASE SUMMARY

Claimant alleged that Respondents misrepresented the terms of his employment at PaineWebber. Claimant further alleged that prior to associating with PaineWebber, he was a broker with Prudential Securities, Inc. ("Prudential") and concentrated his business in the secondary markets of Unit Investment Trusts ("UIT"). Claimant asserted that in early 1993, he was solicited by the Respondents to transfer his business to their facilities. Claimant further asserted that in or about February 1993, he went to the New York offices of PaineWebber to interview for a position, and was introduced to Keith, a branch manager of PaineWebber. Claimant alleged that during the interview he explained to Keith the fact that he traded the secondary markets and handled only the fixed income UITs. Claimant further alleged that Keith, on behalf of Respondents, promised Claimant more than once that his UIT business would continue unabated if he decided to transfer his employment to PaineWebber. Claimant contended that based on the Respondents' representations regarding his terms of employment, including those terms regarding his UIT business, he decided to quit his job at Prudential and work for the Respondents.

Claimant asserted that the Respondents did not live up to their promises regarding his ability to conduct his UIT business. Claimant further asserted that Respondents showed little interest in his UIT business and that they failed to fulfill their promise to provide adequate facilities to oversee the UIT markets. Claimant alleged that although his UIT business accounted for more than half of his commissions at Prudential, his UIT business accounted for less than 5% when working for Respondents. Claimant further alleged that Respondents misrepresented to him that he would be able to continue his UIT business unabated if he were to work for them, and that Respondents acted in bad faith and breached their employment contract with him. Claimant contended that as a consequence of the Respondents' malfeasance, he has suffered damages in the amount of \$140,000.00.

Respondents maintained that they had not made any promises regarding the amount of specific business that would be available to Claimant, that Claimant had no employment contract, and that Claimant was an at will employee. Respondents further maintained that Claimant's allegations of fraudulent inducement are without merit. Respondents alleged that Claimant represented to PaineWebber that he would be able to bring in business, which was a representation which Claimant was unable to fulfill. Respondents further alleged that any reduction in the level of Claimant's business was due to the departure of his partner, his own performance or market conditions, and not to any deceit on the part of Respondents. Respondents maintained that they had committed no wrongdoing and requested that the claims against them be dismissed.

Respondent PaineWebber asserted a counterclaim against Claimant Paul I. Kleinberg. PaineWebber alleged that on or about February 11, 1993, Claimant signed an Investment Executive Agreement ("IE Agreement") and that on or about February 19, 1993, it hired Claimant as an investment executive in its New York office. PaineWebber further alleged that on or about February 23, 1993, it advanced Claimant the sum of \$146,423.00 and that Claimant signed a promissory note (the "Note"). PaineWebber contended that under the terms of the Note, Claimant's indebtedness would be forgiven in four equal annual installments of \$36,605.75 each on 2/23/94, 2/23/95, 2/23/96, and 2/23/97, provided that certain conditions were met, but that if Claimant's employment by PaineWebber was terminated for cause, or voluntarily terminated by Claimant for any reason whatsoever, prior to the due date of the Note, then PaineWebber, at its option, could declare the Note immediately due and payable.

PaineWebber asserted that Claimant voluntarily resigned from PaineWebber on February 17, 1995. PaineWebber further asserted that since Claimant's employment was terminated after the second forgiveness date, one-half or \$73,211.50 of the Note was forgiven and there remained a balance due of one-half of the Note.

PaineWebber contended that Claimant's termination triggered a debt due to PaineWebber in the aggregate amount of \$73,211.50 on the Note. PaineWebber further contended that this amount plus a Tax Receivable of \$1,548.71 and FICA Arrears in the Amount of \$2,269.56, left a defaulted balance due of \$77,029.77.

In an Answer to PaineWebber's Counterclaim, Claimant Kleinberg reiterated that PaineWebber and Keith never lived up to their promises regarding his ability to conduct his UIT business and that they failed to provide him with facilities to conduct his UIT business. Claimant maintained that he was fraudulently induced into signing the IE Agreement and the Note and that PaineWebber and Keith failed to abide by the terms of employment they offered to him. Claimant further maintained that he resigned due to Respondents' breach of contract and his realization that he was fraudulently induced to work for PaineWebber. Claimant contended that he had committed no wrongdoing and requested that the counter-claims against him be dismissed.

RELIEF REQUESTED

Claimant Paul Kleinberg requested damages in the amount \$140,000.00, plus interest, attorney's fees, costs, and any other damages the Panel deems just.

Respondent PaineWebber, Inc. requested that all claims against it be dismissed and on its counterclaim it requested entry of an award in its favor in the amount of \$77,029.77, plus interest, together with attorneys' fees, costs and filing costs.

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.

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. The claims of Claimant Paul I. Kleinberg against Respondent PaineWebber, Inc. and Respondent George Keith are dismissed in their entirety.
2. Claimant Paul I. Kleinberg is liable and shall pay to Respondent PaineWebber, Inc. \$73,211.00 as reimbursement of the loan principal. Claimant Paul I. Kleinberg shall also pay to Respondent PaineWebber, Inc. interest in the amount of \$7,497.00, reimbursement of taxes in the amount of \$1,548.00, and a FICA reimbursement in the amount of \$2,269.00.
3. All other requests for relief are denied.
4. All forum fees shall be assessed against Claimant Paul I. Kleinberg, including the return of PaineWebber, Inc.'s Hearing Session deposit.

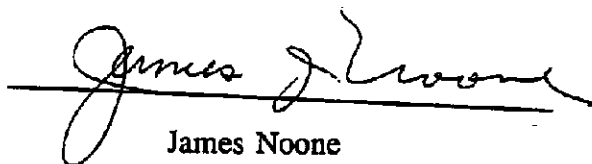
FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$500.00 non-refundable filing fee previously deposited by Claimant Paul I. Kleinberg and have assessed the following forum fees:

8 Sessions x \$750.00 = \$6,000.00

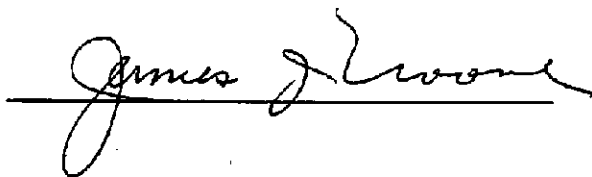
Claimant be and hereby liable for the sum of \$6,000.00 representing the total amount of forum fees assessed. Claimant previously deposited \$750.00 with the NASD. Therefore, Claimant owes \$5,250.00, of which \$600.00 is owed to Respondent PaineWebber.

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

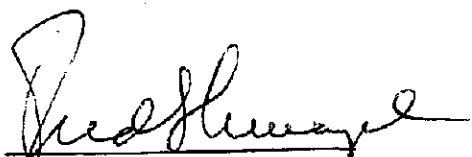


James Noone
Industry Panelist

I, James Noone, do hereby affirm that this is my decision in the above-captioned matter.



Date of Decision: August 27, 1996



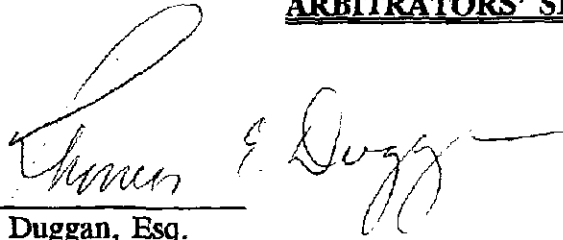
Fred Shinagel
Industry Panelist

I, Fred Shinagel, do hereby affirm that this is my decision in the above-captioned matter.



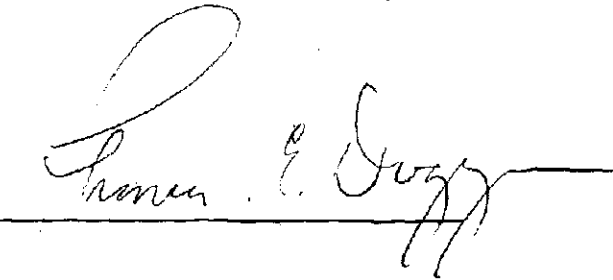
Date of Decision: August 27, 1996

ARBITRATORS' SIGNATURES

A handwritten signature in cursive script, reading "Thomas E. Duggan", followed by a horizontal line.

Thomas Duggan, Esq.
Industry Chairperson

I, Thomas Duggan, do hereby affirm that this is my decision in the above-captioned matter.

A handwritten signature in cursive script, reading "Thomas E. Duggan", followed by a horizontal line.

Date of Decision: August 27, 1996