

NASDR AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

PaineWebber, Incorporated

Claimant,

v.

No. 95-01523

Terrance Roddy

Respondent.

REPRESENTATION OF PARTIES

Claimant PaineWebber, Incorporated was represented by Thomas M. Mierswa, Esquire, of PaineWebber, Incorporated located in Weehawken, New Jersey.

Respondent Terrance Roddy was represented by Thomas H. Boyd, Esquire, of Winthrop & Weinstine located Minneapolis, Minnesota.

CASE INFORMATION

Claimant PaineWebber, Inc.'s Statement of Claim was filed on or about March 27, 1995.

Claimant's Submission Agreement was signed on March 17, 1995 by Romaine Gardner, First Vice President and Managing Attorney.

Respondent Terrance Roddy's Statement of Answer, Affirmative Defenses was filed on or about June 5, 1995.

Respondent's Submission Agreement was signed on June 5, 1995.

Claimant's Reply to the Counterclaim was filed on or about August 3, 1995.

HEARING INFORMATION

A pre-hearing conference was held on November 10, 1995 for one (1) session.

The hearing was held on May 8, 1996 for two (2) sessions, May 9, 1996 for two (2) sessions, and June 13, 1996 for two (2) sessions.

Hearing location was Minneapolis, Minnesota.

CASE SUMMARY

Claimant PaineWebber, Inc. ("Claimant") alleged that Respondent Terrance Roddy ("Respondent") owes the balance of two promissory notes issued by Claimant. The relevant terms of the promissory notes are that they were to be repaid in annual installments by Respondent as long as he remained employed, but if Respondent's employment with Claimant was terminated, then Claimant, at its option, could declare the promissory notes immediately due and payable. Respondent's employment with Claimant has terminated and Claimant seeks a pro-rated balance of the two promissory notes, which is allegedly \$171,035.50.

Respondent denies that he owes Claimant any amount. Respondent alleges that if any amount is due on the two promissory notes, then the pro-rated balance due on both promissory notes can be no more than \$150,511.26. Respondent also asserts the following affirmative defenses: (1) Claimant's Statement of Claim fails to state a claim on which relief may be granted; (2) Claimant's claim may be barred by the equitable doctrines of waiver, estoppel and/or laches; (3) Claimant's claim may be barred by the applicable statute of limitations; (4) Claimant's claim may be barred by Respondent's right to rescission of the promissory notes; (5) Claimant's claim may be barred by the doctrine of unclean hands; (6) Claimant's claim is barred because the promissory notes are null and void as a matter of law; (7) Claimant's claim are barred because Claimant fraudulently induced Respondent to enter into the promissory notes; (8) Claimant's claim may be barred due to Claimant's failure to mitigate its alleged damages; (9) Claimant's damages are due to actions of third parties over whom Respondent had no control; and (10) Claimant's recovery, if any, is limited to \$150,511.26.

Respondent also makes the following counterclaims: (1) fraudulent inducement; (2) negligent misrepresentations; and (3) breach of contract. Respondent alleges that Claimant promised that certain accounts would be assigned to him and were not. Respondent further alleges that he relied on these misrepresentations to his detriment by giving up his previous job and forgoing potential income from the promised accounts. Respondent contends that these promises were part of an employment contract and that Claimant has breached that contract. Respondent alleges that he has suffered harm and damages in an amount of at least \$350,000.

PaineWebber, Inc. ("PaineWebber"), Claimant, denies all counterclaims and makes the following affirmative defenses: (1) Terrance Roddy ("Roddy"), Respondent, failed to state a cause of action against PaineWebber; (2) PaineWebber acted in good faith and without malice; (3) the damages allegedly suffered by Roddy have no causal relationship with any act committed by PaineWebber; (4) Roddy is estopped by his conduct from maintaining this action against PaineWebber; (5) Roddy is barred by applicable statutes of limitations; (6) Roddy's claims are barred by the doctrines of ratification and affirmance; (7) the injuries, if any, alleged to have been sustained by Roddy were caused in whole or in part, by him; (8) Roddy did not reasonably rely to his detriment upon any representation or action made by PaineWebber; (9) Roddy failed to mitigate his damages; and (10) Roddy has no basis for asserting a claim for attorneys' fees.

RELIEF REQUESTED

Claimant requested an award in the amount of \$171,035.50 plus pre-judgment interest, reasonable attorneys' fees, costs, and NASD filing costs.

Respondent requested that the claims asserted against him be denied with prejudice. Respondent further requests an award against Claimant in an amount of at least \$350,000 plus prejudgment interest, reasonable attorney's fees, and costs in defending the Statement of Claim and in prosecuting his counterclaims.

OTHER ISSUES CONSIDERED & DECIDED

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:

- (1) That the respondent is liable for and shall pay to the Claimant \$171,035.00 in actual damages, and \$26,571.63 in interest accrued from January 13, 1995 to June 12, 1996;
- (2) That the Respondent is liable for and shall pay to the Claimant \$6,900 in attorney's fees and 3,955.40 in costs; and
- (3) That other than forum fees which are addressed below, all other relief not specifically awarded are hereby denied.

FORUM FEES

Forum fees are calculated at the rate of \$ 750 per hearing session and \$300 for each pre-hearing conference, if any. There were six (6) sessions x \$750 and one (1) session x \$300 = \$4,800 in forum fees less the \$750 previously paid by Claimant for a total due of \$4,050. Pursuant to §43(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 \$ 750 previously deposited with the NASD by the Claimant .

Pursuant to §45 of the Code, the NASD shall retain the member surcharge fee in the amount of \$350 previously paid by Respondent.

The remaining forum fees in the amount of \$4,050 are assessed against Respondent and Claimant equally. Therefore, Respondent is liable for and shall pay \$2,025 and Respondent is liable for and shall pay \$2,025 to the NASDR.

The NASD shall retain postponement fees in the amount of \$750 previously deposited with the NASD by the Respondent. Fees are payable to the National Association of Securities Dealers Regulation, Inc.

Dated:

/s/ D. Randall Blohm
D. Randall Blohm, Esq.
Public Arbitrator, Presiding Chair

8-5-96

/s/ Thomas Gmeinder
Thomas J. Gmeinder, Esq.
Public Arbitrator

8-13-96

/s/ Lawrence Furman
Lawrence Furman
Industry Arbitrator

8/5/96

Date of Service by the NASD: August 13, 1996