

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

PaineWebber, Inc.

95-01687

Name of Respondent

Gerald L. Leal

REPRESENTATION

For Claimant PaineWebber, Inc. ("Claimant") appeared Evan J. Charkes, in-house counsel for PaineWebber, Inc., located in New York City, New York.

For Respondent Gerald L. Leal ("Respondent") did not appear at the hearing.

CASE INFORMATION

The Statement of Claim was filed on April 6, 1995.

Claimant's Submission Agreement was signed on March 28, 1995.

A Statement of Answer was filed by Respondent on November 13, 1995.

Respondent did not file a properly notarized Submission Agreement.

HEARING INFORMATION

Hearing Date/Session: April 24, 1996 - One Session

The hearing was held at the offices of the National Association of Securities Dealers, Inc., located in New York City, New York.

CASE SUMMARY

Claimant alleged that on or about March 4, 1993, it hired Respondent as an Investment Executive in its 140 Broadway, New York, New York office. Claimant further alleged that in

connection with his employment, Respondent signed a U-4 in which he agreed to arbitrate any dispute that arises between he and Claimant. Claimant also alleged that Respondent signed an Investment Executive Agreement ("IEA") in which he agreed to repay it for advances given to him but not repaid. Claimant contended that Respondent was advanced \$72,463.00 and signed a promissory note which provided repayment terms. Claimant further contended that if Respondent abided by the terms, the debt would have been forgiven four equal annual amounts, however, if he terminated his employment, it could declare the amount immediately due and payable.

Claimant alleged that Respondent was advanced an additional \$30,288.00 on April 27, 1994, which provided for debt forgiveness in three equal annual amounts, provided that the terms were followed and that his employment with it continued. Claimant further alleged that Respondent signed a second promissory note to that effect.

Claimant alleged that on December 12, 1994, Respondent resigned and went to work for another brokerage firm. Claimant further alleged that pursuant to the terms of the promissory notes, only one-quarter of the first loan to Respondent was forgiven and the full amount of the second note remains unpaid. Claimant also alleged that the it is due \$86,635.25 minus an EFL pre-pay of \$8,003.96, leaving a default in the amount of \$78,631.29. Claimant contended that it has unsuccessfully attempted to resolve this dispute with Respondent and that as a result of the above, it has suffered a loss for which the Respondent should be held liable.

Respondent maintained that in March of 1993 he began employment with Claimant. Respondent further maintained that prior to accepting employment, Claimant's branch manager at the 1285 Avenue of the Americas branch, met with him so the Respondent could explain his business and his client base. Respondent also maintained that Claimant failed to live up to the terms of their employment agreement, causing him to resign. Respondent contended that he has been improperly charged with an "error" in the amount of \$5,000.00 and that as a result of the above, he should not be held liable.

RELIEF REQUESTED

Claimant requested \$76,631.29 in actual damages, plus interest, together with reasonable attorney's fees, costs, and filing fees.

Respondent requested that the claims of the Claimant be dismissed in their entirety and that Claimant be assessed costs and fees.

OTHER ISSUES CONSIDERED & DECIDED

The panel of arbitrators made the following rulings as to Respondent, who failed to file a properly executed Submission Agreement and who failed to appear at the evidentiary hearing conducted in this matter without obtaining any adjournment/postponement thereof:

1. Pursuant to Section 1 of the Code of Arbitration Procedure ("the Code"), the panel of arbitrators found subject matter jurisdiction over this entire controversy.
2. The panel found that there existed a duly executed and enforceable agreement to arbitrate between Claimant and Respondent and, therefore, the panel found personal jurisdiction over Respondent pursuant to Section 1 of the Code.
3. In view of (2) above, the panel found the Respondent was required to file with the NASD a Submission Agreement pursuant to Section 25(b) of the Code.
4. Finally, the panel found that the NASD, pursuant to Sections 21, 26 and 29 of the Code, provided Respondent with "due notice" of all hearings conducted in this matter by regular and certified mail. The panel, therefore, determined to proceed with the hearing without Respondent whose absence was, as stated previously, unexcused.

The Claimant, being the only party that appeared at the hearing, 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 Claimant agreed to receive conformed copies of the award while the originals remain on file with the NASD.

AWARD

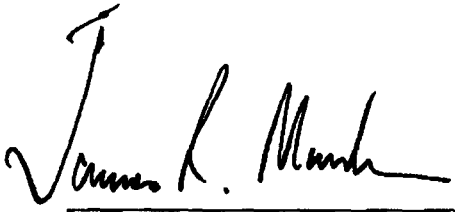
After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Gerald L. Leal is liable and shall pay to the Claimant PaineWebber, Inc. the sum of \$76,631.29 in actual damages.
2. Respondent Gerald L. Leal is liable and shall pay to the Claimant PaineWebber, Inc. the sum of \$11,601.75 in interest.
3. The parties shall bear their respective costs and attorney's fees, except that Respondent Leal be and hereby is liable and shall reimburse claimant the sum of \$1,100.00 representing forum fees previously deposited by claimant with the NASD.
4. All other relief requests are denied.

FORUM FEES

Pursuant to Section 44c of the NASD Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$500.00 non-refundable filing fee and \$600.00 hearing session deposit previously deposited by Claimant and have assessed the following forum fees:

ARBITRATORS' SIGNATURES



James R. Madan
Industry Arbitrator - Chairperson

John J. Witkowski, Jr., Esq.
Industry Arbitrator

Russell A. Jenkins
Industry Arbitrator

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



James R. Madan

Date of Decision: June 18, 1996

FORUM FEES

Pursuant to Section 44c of the NASD Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$500.00 non-refundable filing fee and \$600.00 hearing session deposit previously deposited by Claimant and have assessed the following forum fees:

ARBITRATORS' SIGNATURES

James R. Madan
Industry Arbitrator - Chairperson



John J. Witkowski, Jr., Esq.
Industry Arbitrator

Russell A. Jenkins
Industry Arbitrator

I, John J. Witkowski, Jr., Esq., do hereby affirm, pursuant to Article 7507 of the Civil Procedure Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.



John J. Witkowski, Jr., Esq.

Date of Decision: June 18, 1996

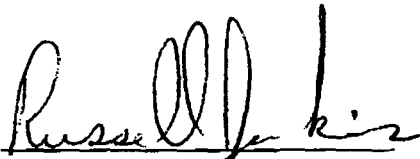
FORUM FEES

Pursuant to Section 44c of the NASD Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$500.00 non-refundable filing fee and \$600.00 hearing session deposit previously deposited by Claimant

ARBITRATORS' SIGNATURES

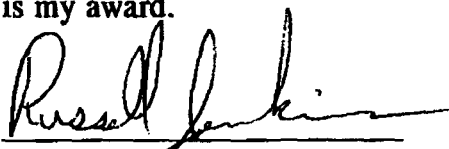
James R. Madan
Industry Arbitrator - Chairperson

John J. Witkowski, Jr., Esq.
Industry Arbitrator



Russell A. Jenkins
Industry Arbitrator

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



Russell A. Jenkins

Date of Decision: June 18, 1996