

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

PaineWebber, Inc.

vs.

95-01689

Name of Respondent

Mario J. Ferrari

REPRESENTATION

For Claimant, PaineWebber, Inc., appeared Evan J. Charkes, Esq. in-house counsel for PaineWebber Inc. located in New York, New York.

For Respondent, Mario J. Ferrari, appeared Dan A. Druz, Esq., sole practioner, Sea Girt, New Jersey.

CASE INFORMATION

Statement of Claim filed: April 5, 1995.

Claimant's Submission Agreement signed on: March 31, 1995.

Statement of Answer and Counterclaim filed on July 7, 1995.

Respondent's Submission Agreement signed on July 12, 1995.

Claimant's Reply to Counterclaim filed on July 12, 1995.

HEARING INFORMATION

Hearing Dates/Sessions:	July 24, 1996	-	2 Sessions
	October 7, 1996	-	1 Session

Hearing Location:	NASD Offices
	New York, New York

CASE SUMMARY

Claimant alleged that Respondent was hired by PaineWebber, Inc. on or about May 15, 1992, and in connection with this employment Claimant advanced Respondent the sum of \$37,921.00 for which Claimant signed promissory note #3797 ("Note # 3797"). Claimant alleged that Note # 3797 provided that Respondent's indebtedness would be forgiven in from equal annual installments of \$9,480.25 each, provided that certain conditions were met, but that if Respondent's employment with Claimant were terminated, either voluntarily or involuntarily by Respondent, or involuntarily for cause, PaineWebber, at its option may declare Note #3797 due and payable.

Claimant alleged that at or about the time Respondent signed Note #3797, he was also provided with a separate written explanation of the terms of the promissory note and signed a separate acknowledgement form which stated that he had read the separate explanation regarding the obligation to repay the unforgiven portion of Note # 3797.

In addition, Claimants alleged that in connection with Respondent's employment, on or about July 28, 1993, PaineWebber advanced Respondent the sum of \$29,000.00 and Respondent signed a second promissory note, Note # 4578. Claimants maintained that the terms of Note # 4578 were the same as that of Note # 3797 except that Note # 4578 was to be forgiven in three annual installments of \$9,667.00. Claimants alleged that Respondent signed a separate acknowledgement form for Note # 4578, as he had for Note # 3797.

Claimant alleged that the two Notes had the same due date of June 12, 1996, and that the total sum of the loans was \$66,922.00. Claimant alleged that on December 26, 1994, Respondent voluntarily resigned from PaineWebber to go to work for another brokerage firm. Claimant alleged that since Respondent's employment was terminated after his second anniversary two-quarters of Note #3797 had been forgiven (\$18,760.50), leaving a balance of \$18,960.00, and one-third of Note #4578 had be forgiven (\$9,667.00), leaving a balance due of \$19,334.00. Claimant alleged that combined balance of the two Notes amounted to \$38,294.50, less a pre-pay of \$1,899.48, leaving a balance due of \$36,395.02.

Claimant alleged that it had tried, unsuccessfully to resolve this matter with Respondent who has failed and refuse to honor the agreement to repay the debt. Claimant further alleged that on January 10, 1994, Claimant wrote Respondent declaring Respondent's debt to PaineWebber immediately due and payable.

Respondent maintained that PaineWebber advanced a sum of money to Respondent pursuant to terms of two promissory notes. Respondent maintained that these notes represented "up-front money", which was used to induce Respondent to leave his prior firm to work for Claimant. Respondent maintained that on or about December 30, 1994, Respondent was involuntarily terminated for cause;and not voluntarily terminated as Claimant alleged.

Respondent maintained that the promissory note states the "Note shall immediately become due and payable.....in the event that the Employee's employment with PaineWebber is terminated either (i) voluntarily or involuntarily by the employee, for any reason whatsoever other than

Disability or Death, or (ii) involuntary for cause." Respondent maintained therefore, that for PaineWebber to demand payment of the Note it must demonstrate that Respondent was terminated for cause. Respondent maintained that PaineWebber has failed to do so.

Respondent maintained that he was terminated because he was incorrectly blamed for a practical joke that was played in the office and that neither of the actual perpetrators were terminated although their identity was known to the Branch Manager.

In his counterclaim, Respondent alleged that customarily, when brokers in the securities industry change firms they make certain preparations in order to ease the transition for their clients and themselves. Respondent alleged that he was denied this opportunity, even though he appealed his case to the highest levels of management, and as a result was only able to persuade a minority of his clients to follow him to his new employer. Respondent maintained that the damage to his clientele will take years to repair and that PaineWebber has obtained a windfall in commission at Respondent's expense.

In answer to the counterclaim, Claimant maintained that the promissory notes stated that PaineWebber may accelerate the amount due and payable under the Note if Respondent was terminated for "cause". Claimant maintained that "cause" is defined in the Notes as including "the failure by the employee to act in accordance with the policies and procedures of PaineWebber, (including, without limiting the generality of the foregoing, the code of conduct) in effect from time to time.

Claimant maintained that Respondent was terminated for his repeated violation of PaineWebber Code of Conduct. Respondents maintained that these violations included leaving an inflated condom on a co-workers desk, being disruptive and asked to leave sales meetings, and threatening harm to members of PaineWebber's management. Claimant maintained that it is not responsible for ensuring the success of a broker who conducts himself in such a manner.

RELIEF REQUESTED

Claimant requested an award of \$36,395.02 against Respondent plus interest, together with reasonable attorneys' fees, costs and NASD filing cost. In addition, Claimant request that Respondent's counterclaim be dismissed in its entirety.

Respondent requested that all claims be dismissed in their entirety and that the costs of this proceeding be assessed against Claimant. In addition, Respondent request \$250,000.00 in damages; \$100,000.00 in punitive damages; costs, expenses and disbursements, including reasonable attorneys' fee; and for such other relief as the arbitrators deem just and proper.

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(s) remain on file with the NASD.

AWARD

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

1. Respondent, Mario Ferrari, is liable and shall pay to Claimant, PaineWebber, Inc., the sum of \$36,395.02 with post-judgement interest at the rate of 9% from October 7, 1996 to date of payment;
2. Respondent, Mario Ferrari's counterclaim is denied in its entirety;
3. The parties shall bear their respective costs, including attorneys' fees;
4. All other requests for relief are denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

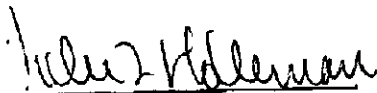
Pre-Hearing Fees:	\$600.00	-	(2 sessions x \$300)
Hearing Fees:	<u>\$2250.00</u>	-	(3 sessions x \$750)
Total Forum Fees:	\$2850.00		

Claimant is assessed the sum of \$1,425.00 representing one-half the forum fees due, less \$600.00 previously paid, leaving \$825.00 due. Claimant PaineWebber, Inc., is liable and shall pay to the NASD the sum of \$825.00.

Respondent is assessed the sum of \$1,425.00 representing one-half the forum fees due, less \$750.00 previously paid leaving \$675.00 due. Respondent, Mario Ferrari, is liable and shall pay to the NASD the sum of \$675.00.

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

ARBITRATORS' SIGNATURES



Vicki Z. Holleman, Esq.
Industry Chairperson

Charles P. Axelrod
Industry Arbitrator

Ginson A. Yee
Industry Arbitrator

Date of Decision: January 16, 1997

I, Vicki Z. Holleman, Esq., do hereby affirm, pursuant to Article 7505 of the Civil Practice Law and Rules, that this is my decision in the above captioned matter.


Vicki Z. Holleman, Esq.

I, Charles P. Axelrod, do hereby affirm, pursuant to Article 7505 of the Civil Practice Law and Rules, that this is my decision in the above captioned matter.

Charles P. Axelrod

I, Gimson A. Yee, do hereby affirm, pursuant to Article 7505 of the Civil Practice Law and Rules, that this is my decision in the above captioned matter.

Gimson A. Yee

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Vicki Z. Holleman, Esq.

I, Charles P. Axelrod, do hereby affirm, pursuant to Article 7505 of the Civil Practice Law and Rules, that this is my decision in the above captioned matter.

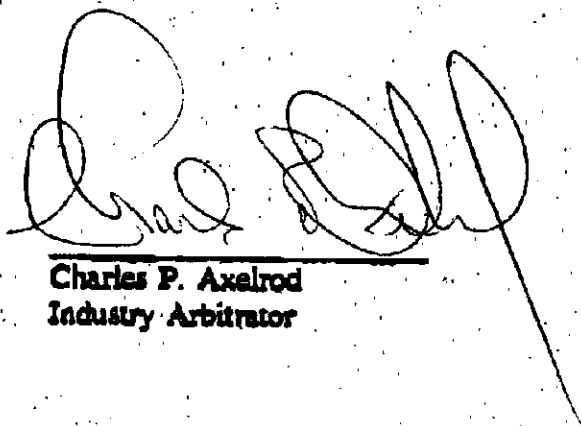

Charles P. Axelrod

I, Gimson A. Yee, do hereby affirm, pursuant to Article 7505 of the Civil Practice Law and Rules, that this is my decision in the above captioned matter.

Gimson A. Yee

ARBITRATORS' SIGNATURES

Vicki Z. Holleman, Esq.
Industry Chairperson



Charles P. Axelrod
Industry Arbitrator

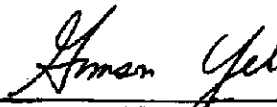
Gimson A. Yee
Industry Arbitrator

Date of Decision: January 16, 1997

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Industry Chairperson

Charles P. Axelrod
Industry Arbitrator



Gimson A. Yee
Industry Arbitrator

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Gimson A. Yee
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