

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

PaineWebber, Inc.

95-01900

Name of Respondent

Kenneth Mahoney

REPRESENTATION

For Claimant appeared Evan J. Charke, Esq. of PaineWebber, Inc..

For Respondent Kenneth Mahoney appeared Dan Druz, Esq.

CASE INFORMATION

Statement of Claim was filed on April 18, 1995.

Claimant's Submission Agreement was signed on April 13, 1995.

Statement of Answer was filed by Respondent on July 3, 1995.

Respondent's Submission Agreement was filed on April 15, 1996.

HEARING INFORMATION

Pre-Hearing Conference:	February 27, 1996	One Session
Hearing Dates/Sessions:	March 12, 1996	One Session
	April 16, 1996	Two Sessions

The hearing was held at the NASD Inc.'s offices in New York City, New York.

CASE SUMMARY

Claimant alleges that on or about February 18, 1992 Claimant hired Respondent as an Investment Executive. Claimant further alleges that Respondent signed a promissory note and was advanced \$35,600.00 in return. The terms of the note stated that Respondent's indebtedness would be forgiven in equal installments over a four year period provided certain conditions were met. Claimant states, in particular, if Respondent's employment was terminated prior to the due date, the note would become due

at Claimant's option. Claimant states that Respondent acknowledged he read the additional explanation supplied by Claimant regarding his obligation on the note.

Claimant alleges that it advanced additional money, in the sum of \$38,780.00, to Respondent on or about July 14, 1993 pursuant to Respondent signing a second promissory note. The debt incurred as a result of the second note would be forgiven in three annual installments under conditions similar to the first note. Claimant states that on January 13, 1995, Respondent voluntarily resigned and that resignation triggered a debt due Claimant of \$37,879.17.

Respondent maintains that the notes represented "up front money" which was used to induce Respondent to work for Claimant. Respondent states that he resigned from Claimant on or about January 14, 1995. Further Respondent makes allegations that Claimant canceled certain insurance business which had been "booked" by Respondent and "re-wrote" it under another broker's number, depriving Respondent of approximately \$3,000.00 in commission.

Respondent makes a counterclaim and alleges that Claimant fraudulently induced Respondent to enter into the employment agreement. Respondent also alleges that a number of Claimant's brokers defamed him resulting in his loss of clients.

In response to the counterclaim, Claimant maintains that the allegations in the counterclaim are frivolous. Claimant denies the allegation relating to the alleged misrepresentation at the time Respondent was hired and the allegation that Claimant's brokers defamed Respondent.

RELIEF REQUESTED

Claimant requested damages in the amount of \$37,879.17, plus interest, reasonable attorney's fees, costs and filing fees against Respondent. Claimant, in answer to Respondent's counterclaim, requested that the claim be dismissed.

Respondent requested dismissal of Claimant's Statement of Claim and that Claimant be assessed with all costs. Respondent requested damages in conjunction with his counterclaim in the amount of \$50,000 for actual damages, \$50,000 for punitive damages, attorney's fees, all costs and filing fees and any other relief that the panel deemed just and appropriate.

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.

The arbitrators have decided not to refer Respondent to the District Business Conduct Committee for disciplinary proceedings.

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 be and hereby is liable and shall pay Claimant the sum \$43,067.13 representing the debt on the two promissory notes and interest through April 15, 1996.

2. Respondent Mahoney be and hereby is liable and shall reimburse Claimant the sum of \$1100.00 representing the non-refundable filing fee and the hearing session deposit Claimant deposited in connection with filing this claim.

3. Claimant's request for attorney's fees is denied.

4. The damages requested on the counterclaim are denied in full.

OTHER COSTS

The panel has assessed the adjournment fee against Respondent Mahoney in the sum of \$600.00.

FORUM FEES

Pursuant to Section 44c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

1 Pre-Hearing Session x \$600.00	\$600.00
3 Hearing Sessions x \$600.00	\$1,800.00
Total	\$2,400.00

The undersigned arbitrators have determined that the Respondent shall be and hereby is liable for the balance of fees due to the NASD.

1. The Respondent shall pay \$2,400.00 less Claimant's payment of \$600.00 and Respondent's payment of \$600.00 = net \$1,200.00 due.

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

ARBITRATORS' SIGNATURES

E. Stephen Walsh
Industry Arbitrator

Thomas Levis
Industry Arbitrator



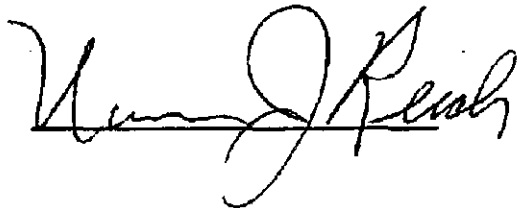
Norman J. Reich
Industry Arbitrator

NASD Date of Decision: May 14, 1996

I, **E. Stephen Walsh**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law and Rules, that this is my decision in the above-captioned matter.

I, **Thomas Levis**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law and Rules, that this is my decision in the above-captioned matter.

I, **Norman J. Reich**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law and Rules, that this is my decision in the above-captioned matter.

A handwritten signature in cursive script, reading "Norman J. Reich", written over a horizontal line.

NASD Date of Decision: May 14, 1996

2. Respondent Mahoney be and hereby is liable and shall reimburse Claimant the sum of \$1100.00 representing the non-refundable filing fee and the hearing session deposit Claimant deposited in connection with filing this claim.

3. Claimant's request for attorney's fees is denied.

4. The damages requested on the counterclaim are denied in full.

OTHER COSTS

The panel has assessed the adjournment fee against Respondent Mahoney in the sum of \$600.00.

FORUM FEES

Pursuant to Section 44c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

1 Pre-Hearing Session x \$600.00	\$600.00
3 Hearing Sessions x \$600.00	\$1,800.00
Total	\$2,400.00

The undersigned arbitrators have determined that the Respondent shall be and hereby is liable for the balance of fees due to the NASD.

1. The Respondent shall pay \$2,400.00 less Claimant's payment of \$600.00 and Respondent's payment of \$600.00 = net \$1,200.00 due.

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

ARBITRATORS' SIGNATURES

E. Stephen Walsh
Industry Arbitrator



Thomas Levis
Industry Arbitrator

Norman J. Reich
Industry Arbitrator

NASD Date of Decision: May 14, 1996

I, **E. Stephen Walsh**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law and Rules, that this is my decision in the above-captioned matter.

I, **Thomas Lewis**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law and Rules, that this is my decision in the above-captioned matter.

Thomas Lewis

I, **Norman J. Reich**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law and Rules, that this is my decision in the above-captioned matter.

NASD date of Decision: May 14, 1996

2. Respondent Mahoney be and hereby is liable and shall reimburse Claimant the sum of \$1100.00 representing the non-refundable filing fee and the hearing session deposit Claimant deposited in connection with filing this claim.

3. Claimant's request for attorney's fees is denied.

4. The damages requested on the counterclaim are denied in full.

OTHER COSTS

The panel has assessed the adjournment fee against Respondent Mahoney in the sum of \$600.00.

FORUM FEES

Pursuant to Section 44c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

1 Pre-Hearing Session x \$600.00	\$600.00
3 Hearing Sessions x \$600.00	\$1,800.00
Total	\$2,400.00

The undersigned arbitrators have determined that the Respondent shall be and hereby is liable for the balance of fees due to the NASD.

1. The Respondent shall pay \$2,400.00 less Claimant's payment of \$600.00 and Respondent's payment of \$600.00 = net \$1,200.00 due.

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

ARBITRATORS' SIGNATURES

E. Stephen Walsh

E. Stephen Walsh
Industry Arbitrator

Thomas Levis
Industry Arbitrator

Norman J. Reich
Industry Arbitrator

I, **E. Stephen Walsh**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law and Rules, that this is my decision in the above-captioned matter.

E. Stephen Walsh

I, **Thomas Levis**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law and Rules, that this is my decision in the above-captioned matter.

I, **Norman J. Reich**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law and Rules, that this is my decision in the above-captioned matter.

NASD Date of Decision: May 14, 1996