

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

PaineWebber, Inc.

95-02081

Name of Respondent

Robert Kelly

REPRESENTATION

For Claimant, PaineWebber, Inc., Stephanie Morse-Shamosh, Esq., in-house counsel for PaineWebber, Inc. located in Weehawken, New Jersey.

Respondent, Robert Kelly, did not appear at the evidentiary hearing conducted in this matter.

CASE INFORMATION

Statement of Claim filed April 28, 1995.

Claimant's Submission Agreement signed on April 26, 1995.

Respondent failed to file a Statement of Answer or execute a Submission Agreement as required by Section 25(b) of the NASD Code of Arbitration Procedure.

HEARING INFORMATION

Hearing Date/Session: June 18, 1996 - 1 Session

The hearing took place 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 November 5, 1993, they hired Respondent, Robert Kelly ("Kelly"), as an Investment Executive in their Darien, Connecticut office. Claimant further alleged that Kelly signed an Investment Executive Agreement ("IE Agreement") by which he expressly did "agree to reimburse PaineWebber, Inc. for the excess of any advances received by me over earned commissions, as well as any unauthorized expenses incurred by me as an Investment Executive."

Claimant alleged that they advanced the sum of \$134,272.00 to Kelly on or about November 17, 1993. Claimant alleged that this advance was pursuant to a Promissory Note (the "Note"), also known as an Employee Forgivable Loan ("EFL"), which was to be forgiven in four equal annual installments, provided certain conditions were met. Claimant alleged that if Kelly were terminated, voluntarily or involuntarily, they reserved the right to declare the Note immediately due and payable.

Claimant alleged that Kelly voluntarily terminated his employment on June 27, 1994, well before the first forgiveness date of November 17, 1994. Claimant alleged that Kelly's termination triggered a debt to PaineWebber in the amount of \$134,272.00, less an EFL pre-pay of \$2,014.92, leaving a defaulted balance due of \$132,257.08. Claimant further alleged that on June 27, 1994, they sent a letter to Kelly declaring his debt immediately due and payable and demanded repayment. Claimant asserted that Kelly has failed and refused to pay his debt.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$132,257.08 plus interest and costs, including reasonable attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

1. The arbitration panel made the following rulings concerning Respondent Robert Kelly who did not file a Statement of Answer nor a Submission Agreement, and who also failed to appear at the evidentiary hearing conducted in this matter:
 - a. Pursuant to Section 1 of the NASD Code of Arbitration Procedure, the panel found subject matter jurisdiction over this entire controversy.
 - b. The panel found that Respondent was a member of the NASD at the time this controversy arose. Consequently, the panel found personal jurisdiction over Respondent pursuant to Section 12 of the NASD Code of Arbitration Procedure.
 - c. In view of (b) above, the panel found the Respondent was required to file with the NASD a Statement of Answer and a properly executed Submission Agreement pursuant to Section 25(b) of the NASD Code of Arbitration Procedure. In this regard, the panel found that the Statement of Claim was properly served upon

Respondent pursuant to Section 25(a) of the Code.

- d. In addition, in accordance with Sections 21, 26 and 29 of the NASD Code of Arbitration Procedure, the panel found that the NASD provided Respondent with "due notice" of the hearing conducted in this matter by regular and certified mail. The panel therefore, determined to proceed with the hearing without Respondent, whose absence was unexcused.
2. 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. Respondent, Robert Kelly, is liable and shall pay to Claimant PaineWebber, Inc. the sum of \$132,257.08 on the note due;
2. Respondent, Robert Kelly, is liable and shall pay to Claimant PaineWebber, Inc. the sum of \$29,060.38, representing interest on the note;
3. Respondent, Robert Kelly, is liable and shall pay to Claimant PaineWebber, Inc. the sum of \$3,000.00, representing reasonable attorneys' fees, pursuant to the terms of the Note signed by the Respondent; and
4. Respondent Robert Kelly is liable and shall pay to Claimant PaineWebber, Inc. the sum of \$750.00, representing reimbursement of the hearing session deposit.

FORUM FEES

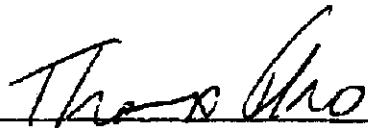
Pursuant to Section 44(c) of the Code of Arbitration Procedure, the arbitrators have assessed the following forum fees:

Total Forum Fees: \$750.00 (1 Session x \$750.00)

Respondent be and hereby is liable for the sum of \$750.00, representing the total forum fees assessed, less \$750.00 previously paid to Claimant, leaving \$0.00 due.

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

ARBITRATORS' SIGNATURES

A handwritten signature in cursive script, appearing to read "Thomas Franko", written over a horizontal line.

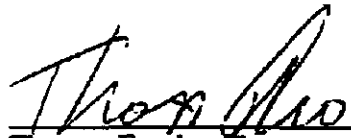
Thomas Franko, Esq.
Industry Chairperson

Berton Seltzberg, Esq.
Industry Arbitrator

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

Date of Decision: September 10, 1996

I, Thomas Franko, 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.


Thomas Franko, Esq.

I, Berton Seltzberg, 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.

Berton Seltzberg, Esq.

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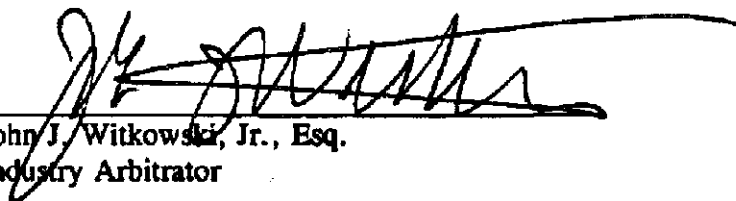
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John J. Witkowski, Jr., Esq.
WITKOWSKI

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