

**NASD REGULATION, INC. AWARD****Office of Dispute Resolution****In the Matter of the Arbitration Between****Name of Claimant****PaineWebber, Inc.****Case No. 95-03067****Name of Respondent****Raymond Curtin****REPRESENTATION OF PARTIES**

**For Claimant: Patricia Cowart, Esq., of PaineWebber, Inc. ("PW"), Ft. Lauderdale, Florida.**

**For Respondent: Arthur C. Koski, Esq. of the law firm of Koski, Aranson & Thomas, P.A., Boca Raton, Florida.**

**CASE INFORMATION**

**Statement of Claim was filed on June 23, 1995. Claimant's Submission Agreement was signed on June 19, 1995.**

**Statement of Answer was filed by Respondent on July 17, 1995. Respondent's Submission Agreement was signed on November 20, 1995.**

**HEARING INFORMATION**

**The evidentiary hearing was held on February 4 and 5, 1998 in Fort Lauderdale, Florida for a total of four (4) sessions.**

**CASE SUMMARY**

**Claimant alleged the following: On or about March 11, 1993, PW hired Raymond Curtin ("Curtin") as an Investment Executive in its Plantation, Florida office. In connection with Mr. Curtin's employment, PW advanced Mr. Curtin the sum of \$285,525.00, which was secured by a Promissory Note ("Note") to PW in the amount of the loan. The terms of**

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the Note provided for payment in four (4) equal annual installments of \$71,381.25. Each installment was due on March 18 of the years 1995, 1996, 1997, and 1998, provided that Mr. Curtin was still in PW's employ. After Curtin was terminated for cause on April 20, 1996, the entire balance on the Note became due and owing. Claimant alleged Mr. Curtin is indebted to PW in the amount of \$214,143.75 owing on the Note, plus tax receivables in the amount of \$4005.54, for a total of \$218,149.29.

Respondent Curtin denied the allegations set forth in the Statement of Claim and specifically stated the following: The Note is only due and payable if Curtin was rightfully terminated for cause. Curtin was wrongfully terminated. Moreover, PW engaged in slander and defamed Curtin by providing Prudential Securities, Inc. ("PSI"), his prospective employer, with false or misleading information as to the circumstances behind his termination. As a direct result, Mr. Curtin was not employed by PSI. In his counterclaim, Curtin alleged that as a direct and proximate result of defamatory and slanderous actions on the part of PW, Curtin has been damaged in his capacity to earn a living; has sustained injury to his reputation and goodwill; has lost income in the form of bonuses to be paid from PSI; has lost customers who would have provided a continued income into the future; and, has suffered extreme mental anguish as well as distress. Respondent asserted the affirmative defense of lack of jurisdiction.

#### **RELIEF REQUESTED**

Claimant requested entry of an award in its favor against Respondent in the amount of \$218,149.29, plus interest, together with attorney's fees, costs and filing fees, as expressly provided for in the Note.

Respondent requested a dismissal of PW's claims and an award on his counterclaim for compensatory damages in an amount in excess of \$100,000.00, punitive damages, costs of suit, attorney's fees and such other relief as deemed appropriate by the arbitration panel.

#### **OTHER ISSUES CONSIDERED & DECIDED**

1. 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 Regulation, Inc. Office of Dispute Resolution.
2. Jurisdiction exists pursuant to Section 10301 of the NASD Code of Arbitration Procedure ("Code") and the Form U-4 executed by Respondent.

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3. At the commencement of the hearing, Respondent requested that the chairperson recuse herself and the Claimant opposed the request. After careful consideration of the matter pursuant to Canon II. E. (2) of the Code of Ethics for Arbitrators, the chairperson denied the request.

### **AWARD**

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

1. Respondent is found liable and shall pay to Claimant the amount of \$214,143.75. This amount represents the principal amount due on the Note.
2. Claimant's requests for attorney's fees, costs, and filing fees are denied. Claimant's request for pre-award interest is denied. Post award interest shall accrue pursuant to Rule 10330(h) of the Code.
3. Respondent's counterclaim is denied. Claimant is found not liable and, therefore, all claims against it are hereby dismissed.
4. Respondent's requests for attorney's fees and costs are denied.

### **FORUM FEES**

Pursuant to Rule 10205(b) of the NASD Code of Arbitration Procedure ("Code"), a hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with an arbitrator, which lasts four hours or less.

Pursuant to Rule 10205(c) of the Code, the panel has assessed forum fees in the amount of \$3,000.00 (four (4) hearing sessions x \$750.00 per session).

1. Claimant is assessed the sum of \$1,500.00 for which NASD Regulation, Inc. shall retain \$1,500.00 of the funds previously deposited in full satisfaction thereof.
2. Respondent is assessed the sum of \$1,500.00 for which NASD Regulation, Inc. shall retain the \$750.00 previously deposited in partial satisfaction thereof, leaving a balance due to NASD Regulation, Inc. of \$750.00.

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3. NASD Regulation, Inc. shall retain the claim filing fees of \$500.00 each paid by the Claimant and the Respondent.

4. Pursuant to Rule 10319(b) of the Code, Respondent shall pay to NASD Regulation, Inc. the sum of \$500.00 representing payment of one half of the previously invoiced postponement fee for the hearing scheduled for September 30, 1997.

5. NASD Regulation, Inc. shall retain the postponement fees of \$750.00 and \$500.00 paid by the Claimant.

**Fees are payable to NASD Regulation, Inc.**

**Concurring Arbitrators Signatures**

/s/

Louise T. Jeroslow, Esq.  
Public Arbitrator, Presiding Chair

/s/

J. Philip Knight  
Public Arbitrator

/s/

David L. Yerkes  
Industry Arbitrator

Date of Decision: 4-1-98