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**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

In the matter of the Arbitration Between

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Securities Dealer:, inc.

**Name of Claimant**

Michael D. Rosenheck

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NASD Arbitration  
No.9503748

**Name of Respondents**

PaineWebber Incorporated, Barry Harberson, Bonnie Freer and Mark Taylor.

**REPRESENTATION**

For Claimant: Claimant appeared in pro per.

For Respondents: David G. Freedman, Esq., Jackson, Lewis, Schnitzler & Krupman, Los Angeles, California.

**CASE INFORMATION**

Statement of Claim filed: August 2, 1995

Claimant's Submission Agreement signed: July 31, 1995

Joint Statement of Answer and Counterclaim filed by Respondents: September 21, 1995

Respondent's Submission Agreements signed:

PaineWebber Incorporated: September 21, 1995

Barry Harberson: August 21, 1995

Bonnie Freer: August 17, 1995

Mark Taylor August 23, 1995

Claimant's Answer to Counterclaim filed: October 15, 1995

**HEARING INFORMATION**

A pre-hearing telephone conference lasting one session was held on January 16, 1996.

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The evidentiary hearing was held in Los Angeles, California, as follows:

April 9, 1996	-	2 sessions
April 10, 1996	-	2 sessions
April 11, 1996	-	2 sessions
April 12, 1996	-	2 sessions
May 1, 1996	-	2 sessions
May 2, 1996	-	2 sessions
May 3, 1996	-	2 sessions
May 13, 1996	-	3 sessions

### **CASE SUMMARY**

Claimant alleged wrongful discharge, breach of implied contract, breach of employment agreement, defamation, negligence, tortious discharge in violation of public policy, breach of covenant of good faith and fair dealing, intentional infliction of emotional distress, promissory estoppel, conspiracy and fraud.

Respondents denied Claimant's allegations and alleged defenses. Respondent PaineWebber Incorporated alleged counterclaims for payment of the outstanding balance of **\$589,950.55** under a promissory note, dated January 13, 1994, in the original principal amount of **\$608,767.00** executed by Claimant (the "Note") by reason of Claimant's employment by Respondent PaineWebber Incorporated having been terminated for cause, indemnification with respect to **\$74,705.20** paid by Respondent PaineWebber Incorporated to a customer, Delane Matthews ("Matthews Indemnification Claim") and indemnification with respect to **\$14,500.00** paid by Respondent PaineWebber Incorporated to a customer, Mark Lefkowitz ("Lefkowitz Indemnification Claim").

### **RELIEF REQUESTED**

Claimant requested **\$16,749,724.55** in compensatory damages; **\$41,249,173.65** in punitive damages; interest, attorney's fees and costs and that Respondent PaineWebber Incorporated take nothing in respect of its counterclaims.

Respondents requested that Claimant take nothing in respect of his claims; and requested an award of attorney's fees and costs.

Respondent PaineWebber Incorporated requested **\$589,950.55** plus interest with respect to the Note; **\$74,705.20** plus interest with respect to the Matthews Indemnification Claim; **\$14,500.00** plus interest with respect to the Lefkowitz Indemnification Claim; attorney's fees and costs with respect to its counterclaims.

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### **OTHER ISSUES CONSIDERED AND DECIDED**

The parties have agreed that the Award in this matter may be executed in either 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 (all determination were unanimous unless indicated otherwise):

1. Claimant shall take nothing with respect to his claims.
2. Respondent PaineWebber Incorporated shall take nothing with respect to its counterclaim relating to the Note (Mr. Pollard dissenting).
3. Respondent PaineWebber Incorporated shall take nothing with respect to its counterclaim relating to the Matthews Indemnification Claim.
4. Claimant is liable for and shall pay to Respondent PaineWebber Incorporated **\$14,500.00** plus interest at the rate of 10% from June 14, 1995 through the date of this Award, with respect to its counterclaim relating to the **Lefkowitz** Indemnification Claim.
5. The parties shall bear their respective costs, including attorney's fees.

### **FORUM FEES**

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the NASD shall retain the parties' non-refundable filing fees (\$500 each).

Claimant is assessed all forum fees: payable to the NASD, Inc.

1 pre-hearing telephone conference @ \$300/session	\$ 300
17 hearing sessions @ 1500/session	\$25,500
Balance Due	<u>\$25,800</u>

### **ARBITRATORS**

<u>Name</u>	<u>Public / Industry</u>
Henry Pollard	Public

Irwin Howard Lasky  
Robert Taylor

Public  
Industry

9/6/96

Concurring Arbitrators' Signatures



Henry Pollard

\_\_\_\_\_  
Irwin Howard Lasky

\_\_\_\_\_  
Robert Taylor

Dated: \_\_\_\_\_

Date Served : 06/10/1996

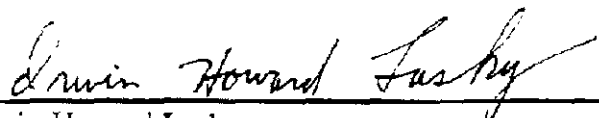
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Irwin Howard Lasky  
Robert Taylor

Public  
Industry

Concurring Arbitrators' Signatures

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Henry Pollard

  
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Irwin Howard Lasky

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Robert Taylor

Date Served: 06/10/1996  
Dated: \_\_\_\_\_

Irwin Howard **Lasky**  
Robert Taylor

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Public  
Industry

Concurring Arbitrators' Signatures

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Henry Pollard

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Irwin Howard **Lasky**

  
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Robert Taylor

Dated: 6/3/96

Date Served: 06/10/1996