

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Kent Smith

95-03951

Name of Respondent

PaineWebber, Inc.

REPRESENTATION

For Claimant Kent Smith appeared Steven A. Goldfarb, Esq. of the law firm HahnLoeser Parks located in Cleveland, Ohio.

For Respondent PaineWebber, Inc. appeared Walter Reynolds, Esq. of the law firm Porter, Wright, Morris & Arthur located in Dayton, Ohio.

CASE INFORMATION

The Statement of Claim filed was filed on August 14, 1995.
Claimant's Submission Agreement was signed on August 14, 1995.

A Statement of Answer was filed by Respondent PaineWebber on October 6, 1995.
Respondent's Submission Agreement was signed on October 6, 1995.

HEARING INFORMATION

Pre-Hearing Conference:	June 20, 1996	-	One Session
	July 3, 1996	-	One Session
Hearing Dates/Sessions:	July 15, 1996	-	Three Sessions
	July 16, 1996	-	Two Sessions
	July 17, 1996	-	Three Sessions
	July 18, 1996	-	Three Sessions
	July 19, 1996	-	Two Sessions
	August 5, 1996	-	Three Sessions
	August 6, 1996	-	Three Sessions
	August 7, 1996	-	Two Sessions

The hearings were all held in Columbus, Ohio.

CASE SUMMARY

Claimant alleged that he was recruited, along with two other individuals, by senior management of PaineWebber's Capital markets and Retail Groups, in 1992. Claimant alleged that he, and the other two individuals, agreed to negotiate with PaineWebber to operate as a partnership. The partnership was allegedly an equal partnership, in which each of the three partners agreed to become employed by PaineWebber and to contract as a partnership, with PaineWebber regarding the terms and conditions of their employment.

Thereafter, on or about January 6, 1993, all three individuals entered into a hiring agreement with PaineWebber pursuant to which three individuals agreed to work for PaineWebber's Divisional Institutional Accounts Group ("DIAG") program. In connection with the hiring agreement, PaineWebber allegedly agreed that the partnership would have exclusive coverage of specific approved accounts. PaineWebber allegedly failed to honor its commitment to the Partnership regarding

coverage of the approved accounts. As a result, the "Hiring Agreement" was allegedly revised on April 30, 1995, compensating the Partnership for the loss of these promised accounts.

Moreover, Claimant alleged that in August of 1993, disputes arose between Claimant, his two partners, and PaineWebber, in connection with the operation of the Partnership and the partners' employment with PaineWebber, Inc. Claimant alleged that the manager of PaineWebber's Cleveland office injected himself into the dispute by allegedly attempting to freeze Smith out of the Partnership and attempting to force Smith to leave PaineWebber. Claimant further alleged that on September 23, 1993, PaineWebber's manager caused all of claimant's personal belongings to be physically removed from the partnership's office.

Further, Claimant alleged that while he negotiated toward a settlement with the other two partners, PaineWebber represented and agreed, that it would consent to any division of the partnership's accounts which the partners would agree to. In March, 1994, the partners allegedly entered into a Mutual Release and Settlement Agreement, pursuant to which the other two partners agreed to transfer all of the partnership's accounts to claimant.

Claimant alleged that PaineWebber breached both its obligations under its revised Hiring Agreement and its representations and promises which induced Smith to settle his dispute with the other two partners by causing and permitting other PaineWebber brokers to cover significant accounts thereby depriving Smith of the coverage opportunities promised by PaineWebber.

Claimant also alleged that he attempted to negotiate a resolution of his disputes with PaineWebber. PaineWebber was allegedly negotiating with General Electric Corporation ("GE") to purchase Kidder Peabody at the same time PaineWebber was allegedly delaying settlement negotiations with Claimant. Claimant alleged that PaineWebber intended to transfer most of the accounts promised to Claimant to Kidder Peabody personnel, in contravention of PaineWebber's contractual commitments to Claimant. PaineWebber allegedly notified Claimant of the consequences of the Kidder Peabody purchase in January, 1995 identifying the accounts being transferred from Claimant of the consequences of the Kidder Peabody purchase in January, 1995 identifying the accounts being transferred from Claimant to Kidder Peabody personnel and ordering Smith to cease contact with these accounts. The notification also confirmed that as part of PaineWebber's purchase of Kidder Peabody, a program (the "Sundown" program) was established to compensate PaineWebber brokers for accounts reassigned to Kidder Peabody brokers. The program provided for PaineWebber personnel to be paid on a monthly basis in 1995 and 1996 for lost commissions caused by account reassignment, based upon 1994 production at a 30% commission rate.

Respondent denied all allegations of wrongdoing asserted against it in the Statement of Claim. Respondent maintained that it has the unilateral right and responsibility to determine the kinds of services and activities to engage in, and to determine the techniques, tools, resources and equipment by which business activity is to be performed. Respondent further maintained that implicit in this unilateral right, is the discretionary power to assign duties and tasks to its employees and evaluate the fitness and abilities of the employees to perform the assigned task.

In addition, Respondent maintained that management has the discretionary and unilateral right to decide which brokers shall have the account coverage for which clients. Further, Respondent maintained that brokers may join together to create a partnership for the purposes of account coverage and dividing compensation. However, Respondent maintained, the relationship of the brokers with PaineWebber always remained as employer/ at-will employee. Respondent further maintained that the existence of a partnership relationship between or among employees does not restrict or limit management's right and responsibility to operate, manage and direct its assets and employees to achieve its corporate and business objectives. As such, any partnership rights existing between employees and their partnership are subordinated to the rights of their employer.

and the duties and obligations owed by the employees to their employer.

Respondent further maintained that the "Sundown" program was established by management to compensate brokers who lost account coverage caused by PaineWebber's acquisition of brokers and accounts from Kidder Peabody. To receive compensation under this program, Respondent maintained that management must first determine that the broker, at the time of the reassignment of the account, had the recognized account coverage. The compensation was contingent upon the affected broker's continuation of employment with PaineWebber.

RELIEF REQUESTED

Claimant requested that the Panel enter an Award in favor of Claimant and against Respondent for compensatory damages in the amount of \$3,500,000.00, plus punitive damages in the amount of \$1,000,000.00; Claimant further requested that the Panel should declare that PaineWebber's conduct constitutes a material breach of Claimant's entire agreement with PaineWebber; and that the Panel should award Claimant pre-judgment and post-judgment interest at the statutory rate, Claimant's reasonable attorneys fees, the costs of this arbitration and any further relief which the Panel determines to be just and equitable.

Respondent requested that all claims asserted against it in Claimant's Statement of Claim be dismissed, with prejudice, and all costs and fees be assessed against the Claimant. Further, Respondent requested that it be awarded such relief to which it is entitled to at law and in equity, including recovery of attorneys fees and costs as permitted by law.

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.

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. In full and complete satisfaction of all claims presented to the panel, the panel has found in favor of the Claimant on the issue of the Sundown Payments in the amount of \$150,000.00, including interest.
2. All other claims be and hereby are dismissed, with prejudice.
3. All claims for attorneys fees, punitive damages and sanctions have been considered and are hereby denied.
4. Each party shall bear their respective costs, including attorneys fees, except that Respondent shall reimburse Claimant the \$1,500.00 hearing session deposit previously deposited with NASDR, Inc.

FORUM FEES

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

2 prehearing conferences @ \$300.00 each = \$600.00
21 sessions X \$1,500.00 = \$31,500.00

Forum fees = \$32,100.00 - \$1,500.00 hearing session deposit = \$30,600.00

Respondent PaineWebber, Inc. be and hereby is liable and shall pay to the NASD, Inc. the sum of \$30,600.00 representing the total amount of forum fees assessed in this matter.

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

Concurring Arbitrators' Signatures
Name



Robert Shiffra
Industry Arbitrator - Chairperson

George W. Munn
Industry Arbitrator

Robert P. Fogarty
Industry Arbitrator

Date of Decision: September 12, 1996

Respondent PaineWebber, Inc. be and hereby is liable and shall pay to the NASDR, Inc. the sum of \$30,600.00 representing the total amount of forum fees assessed in this matter.

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Robert Shiffra
Industry Arbitrator - Chairperson

George W. Humm
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Industry Arbitrator

Robert P. Fogarty
Industry Arbitrator

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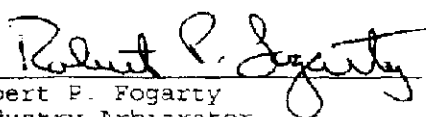
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