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N.A.S.D. AWARD

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

In the Matter of the Arbitration Between

Name of Claimant

PaineWebber, Inc.

95-04085

Name of Respondent

Franklin Kepler

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Securities Dealers, Inc.

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**REPRESENTATION**

Claimant PaineWebber, Inc. ("Claimant") was represented at the hearing by Thomas M. Mierswa, Jr., Esq. of PaineWebber, Inc.

Respondent Franklin Kepler ("Respondent") was represented at the hearing by Herbert R. Rubenstein of Coroneos and Rubenstein, P.C.

**CASE INFORMATION**

The Statement of Claim was filed on August 23, 1995.

Claimant's Submission Agreement was signed on August 10, 1995.

Respondent did not file a Statement of Answer nor submit an executed Submission Agreement.

**HEARING INFORMATION**

Hearing Dates/Sessions: April 22, 1996 - two sessions  
May 13, 1996 - two sessions

Hearing Location: NASD Executive Office  
Washington, DC

**CASE SUMMARY**

On or about July 8, 1994, Claimant hired Respondent as an investment executive in its Bethesda, MD office, in connection with Respondent's employment, Claimant advanced Respondent a sum of money in the amount of \$74,334 for which Respondent signed a promissory note. This is also known as an employee forgivable loan, the terms of which provide that Respondent's indebtedness would be forgiven in four equal installments dated August 31, 1995, August 31, 1996, August 31, 1997 and August 31, 1998 provided he remain an employee in good standing. However, should he be terminated for cause

or should he leave Claimant at his own choosing, then Claimant could declare the note immediately due and payable prior to the due date of the note. Respondent signed the necessary documents attesting to his understanding the terms of the note.

Respondent was terminated for cause by Claimant on March 24, 1995 as a result of violating Respondent's firm policy. Thus, the balance of the note became due in the amount of \$70,988.04 representing \$74,334.00 less \$3345.06 withheld for withholding taxes.

Claimant attempted to collect the amount due on an amicable basis and was unsuccessful, thereby causing this arbitration to go forward.

Respondent stated that the violations for which he was accused were illfounded and that he was improperly released and that Claimant's allegations were not based on fact. He did not believe Claimant acted in a fair, complete and unbiased manner.

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### **RELIEF REQUESTED**

Claimant requested the following:

Total Outstanding Loan Principal	70,986.94	
Accrued Interest form date of Dismissal	<u>363.62</u>	79,352.56
Attorney's Fees: Pre-hearing	2,000.00	
Attorney's Fees: Hearing	<u>3,000.00</u>	5,000.00
Costs - Filing Fees	1,400.00	
Airfare	330.00	
Hotel	199.00	
Meals	<u>150.00</u>	
Expert Witness		2,079.00
Riverside Financial Group (Estimated)		<u>804.02</u>
Subtotal		87,235.58
Client Settlement		27,670.66

Respondent requested the following: Dismissal of claims by Claimant and the payment of attorney's fees (amount undetermined)

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### 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:

That Respondent is liable to Claimant and shall pay to Claimant the sum of \$101,061.24. This total is reflected by the following calculation:

Outstanding Balance of Forgivable Loan	70,988.94
Interest on Balance from Date of Dismissal	8,363.62
Attorney's Fees	5,000.00
Costs-Filing Fees, etc.	2,079.00
Expert Witness Cost	804.02
Sub-Total	87,235.58
1/2 Customer Settlement (Princess Agra)	13,835.66
Total	101,061.24

The award of attorney's fees, expert witness fees and costs are based upon the terms set forth in Promissory Note #5665 which was duly executed by the parties.

### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

4 sessions X \$600 = \$2,400 minus the \$1,400 in filing fees deposited by Claimant and charged to Respondent in the Award above = \$1000 net due.

The remaining forum fees shall be borne equally by Claimant and Respondent so that Claimant is assessed \$500 in forum fees and Respondent is assessed \$500 in forum fees.

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

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Date

6/24/96

Concurring Arbitrators' Signatures



Gordon F. Linke - Chairperson  
Industry Arbitrator

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Carol Corbett - Panelist  
Industry Arbitrator

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Steven R. Bralove - Panelist  
Industry Arbitrator

Date Award Served by the NASD:

June 24, 1996

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Date

Concurring Arbitrators' Signatures

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Gordon F. Linke - Chairperson  
Industry Arbitrator

6/21/95

Carol Corbett

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Carol Corbett - Panelist  
Industry Arbitrator

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Steven R. Bralove - Panelist  
Industry Arbitrator

Date Award Served by the NASD:

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Date

Concurring Arbitrators' Signatures

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Industry Arbitrator

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\_\_\_\_\_  
Carol Corbett - Panelist  
Industry Arbitrator

6/24/96

Steven R. Bralove  
Steven R. Bralove - Panelist  
Industry Arbitrator

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June 24, 1996