

**ARBITRATION AWARD**

**NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION**

In the Matter of the Arbitration Between

Name of Claimant

Jesse Diaz

96-00119

Name of Respondent

PaineWebber Incorporated

**REPRESENTATION**

For Claimant: Jesse Diaz ("Diaz") was represented by Charles Clayton, Esq. of Minneapolis, Minnesota.

For Respondent: PaineWebber Incorporated was represented by Lisa Catalano-Tillem, Esq. of PaineWebber Incorporated, Weehawken, New Jersey.

**CASE INFORMATION**

Statement of Claim filed: January 10, 1996.

Claimant's Submission Agreement signed on: December 14, 1995.

Statement of Answer filed by Respondent on: May 10, 1996.

Respondent's Submission Agreement signed on: May 10, 1996 by Lisa Catalano-Tillem, Divisional Vice President, PaineWebber Incorporated.

**HEARING INFORMATION**

Pre-Hearing Conference: None Held.

Hearing Date/Sessions: February 4, 1997 for Two (2) sessions.

Hearing Location: Chicago, Illinois.

**CASE SUMMARY**

Claimant alleged that a registered representative of Respondent PaineWebber failed to execute a trade as discussed and agreed to by Claimant. Diaz specifically alleged in the Claim that:

1. In late July 1995, Diaz requested that his account be closed and the securities sent to him. PaineWebber failed to close the account;
2. On August 3, 1995, Diaz was contacted by his PaineWebber representative to discuss an opportunity to purchase Microsoft puts. Diaz agreed to purchase 30 contracts at \$2.75;
3. Later that day, Diaz learned that the order was placed at \$3.25. Diaz insisted that the trade was not as he ordered it and further insisted that the representative bear the loss. The PaineWebber representative refused; and
4. Diaz advised PaineWebber by letter of August 15, 1995 of the facts of the trade, asking that PaineWebber bear the loss. PaineWebber refused and Diaz lost the entire amount of money on the trade.

PaineWebber denied the material allegations of the Statement of Claim, asserting that:

1. Diaz's account representative had requested that Diaz no longer trade through him because of Diaz's abuse of the representative and his sales assistants. However, they had agreed to continue their relationship after Diaz agreed to minimize his telephone calls. Diaz never requested that his account be closed;
2. Diaz was never advised that the Microsoft puts were available at \$2.75, but told him that this was the most recent asking price. Diaz was told that the price was changing so rapidly that there was no way of knowing at what price the purchase would be made. However, Diaz agreed to the purchase at the market price, and was informed of the purchase and the purchase price of \$3.25;
3. Diaz did not complain that the trade was unauthorized until August 15, 1995 when he contacted the PaineWebber branch manager, alleging that he authorized the trade at \$2.75 and not market price. In the interest of client relations, Diaz was offered the sum of \$1,500.00 representing the difference between the purchase price and the price Diaz alleged he agreed to. In addition, Diaz was advised to close the position before it expired so as to not lose the entire investment; and
4. Diaz turned down the offer and refused to follow the advice to close out the account, allowing the option to expire on August 22, 1995, thus himself causing the damages he alleged.

In addition, PaineWebber asserted several affirmative defenses, including ratification, estoppel and failure to mitigate.

### **RELIEF REQUESTED**

Claimant requested entry of an award against the Respondent for \$10,083.03 plus expenses, including filing fees and attorneys' fees.

Respondent requested that all claims asserted in the Statement of Claim be denied and that the costs, expenses and attorneys' fees be assessed against Diaz.

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

After the hearing, but before the award was rendered, Respondent PaineWebber requested that additional evidence be sent in the form of a letter to the Panel. Claimant objected to the introduction of further evidence. The Panel concluded that the record was closed prior to receipt of the letter from PaineWebber and that additional evidence would not be accepted.

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 PaineWebber Incorporated is liable for and shall pay to the Claimant, Jesse Diaz, the sum of \$1,500.00 as actual damages;
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
3. Any relief not specifically awarded is hereby denied.

### **OTHER COSTS**

Respondent PaineWebber Incorporated is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the member surcharge in the sum of \$200.00 required pursuant to Section 10333 of the Code of Arbitration Procedure.

**FORUM FEES**

Pursuant to Section 10332(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Two (2) Hearing sessions x \$400.00 per session = \$800.00.

The NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$100.00 non-refundable claim filing fee paid by Claimant Jesse Diaz. In addition, the Office of Dispute Resolution shall retain the \$400.00 hearing session deposit paid by Claimant Jesse Diaz as one-half the forum fees due. Respondent PaineWebber Incorporated is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$400.00 as forum fees.

Concurring Arbitrators' Signatures  
Name

Date

/s/ James L. Schwartz, Esq.  
James L. Schwartz, Esq.  
Public Arbitrator  
Chairperson

March 12, 1997

/s/ G. Gale Roberson, Jr.  
G. Gale Roberson, Jr., Esq.  
Public Arbitrator

March 5, 1997

/s/ Robert H. Stachura, CPA  
Robert H. Stachura, CPA  
Industry Arbitrator

March 10, 1997