

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

PaineWebber, Inc.

96-00403

Name of Respondent

Kirby L. Hatchett

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 29, 1996 Claimant PaineWebber, Inc. ("claimant"), who appeared through its representative and in-house counsel, Thomas M. Mierswa, Jr., Esq., alleged that respondent Kirby L. Hatchett ("respondent") failed to reimburse PaineWebber for funds advanced to him against his future commissions. Claimant further alleged that on or about March 14, 1994, respondent was hired as an Investment Executive at their Texas branch office. Claimant also alleged that in connection with his employment, respondent signed an Investment Executive Agreement, wherein he agreed to reimburse PaineWebber for the excess of any advance received by him over earned commissions, as well as any unauthorized expenses incurred by him as an Investment Executive. Claimant asserted that on April 10, 1995, respondent voluntarily resigned from PaineWebber. Claimant further asserted that in connection with respondent's employment, it agreed to advance him a monthly draw of \$1,800.00 against his future earned commissions. Claimant also asserted that under this agreement if respondent's payout on earned commissions for each month exceeded the amount of the draw, respondent would be entitled to keep the excess. Claimant contended that if the payout earned on commissions did not equal or exceed the \$1,800.00 draw, a draw deficit would arise and respondent would be indebted to it for the amount by which the \$1,800.00 exceeded his payout on commissions which he earned. Claimant further contended that between December 1994 and April 10, 1995, respondents's draw deficit created a cumulative total of \$3,638.62. Claimant also contended that on June 20, 1995, it sent a letter to respondent demanding repayment of his outstanding debt and informed him that it intended to arbitrate this dispute if he refused to repay the debt. Claimant alleged that to this date, respondent has failed and refused to repay any amount of his indebtedness.

Respondent Kirby L. Hatchett ("respondent"), who appeared Pro Se, maintained that on March 12, 1994, he began his employment at PaineWebber. Respondent further maintained that James Cooper ("Mr. Cooper"), PaineWebbers Office Manager, outlined a guaranteed offer of \$3,000.00 a month salary plus commissions at a 40% payout for 6 months; then a \$2,500.00 a month non-recoverable draw and a 40% payout for 6 additional months. Respondent also maintained on September 30, 1994 he noticed that his draw check was only for \$737.00 and not for the agreed upon \$2,500.00 a month. Respondent contended that he spoke with PaineWebber's Office Manger's assistant Patti Trieglaff ("Ms. Trieglaff"), who

supported that the agreement was for \$2,500.00, but stated that PaineWebber would only pay him \$1,800.00. Claimant further contended that he thought that if he accepted the \$1,800.00, it would be nonrecoverable, just like the \$2,500.00 would be non-recoverable. Respondent maintained that in March 1995, PaineWebbers Office Manager Pat Mendenhall ("Mr. Mendenhall") told him that things were not working out at PaineWebber and that he should begin to look for employment elsewhere. Respondent further maintained that on July 6, 1995, he wrote to PaineWebber asking them to provide all documentation showing what amount he owed. Respondent also maintained that on March 12, 1996, he called PaineWebber and asked again for a copy of the agreement just to clarify his understanding of the situation. Respondent contended that PaineWebber said that they would not send him anything. Respondent further contended that PaineWebber has consistently failed to honor their original agreement.

RELIEF REQUESTED

Claimant PaineWebber, Inc. requested \$3,638.62 in actual damages.

Respondent Kirby L. Hatchett requested that the claims of the claimant be dismissed.

AWARD

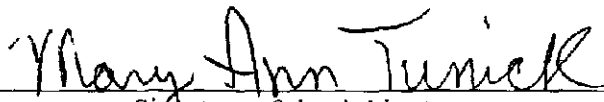
Pursuant to Section 10 of the NASD, Inc. Code of Arbitration Procedure, a single Industry Arbitrator, Mary Ann Tunick, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the claimant PaineWebber, Inc. on January 22, 1996, and by the respondent Kirby L. Hatchett on March 13, 1996 as required by Sections 8 and 10 of the NASD Code of Arbitration Procedure.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Kirby L Hatchett is liable and shall pay to claimant Painewebber, Inc. \$3,638.62 in actual damages.
2. The parties shall bear their respective costs.
3. The \$575.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the claimant PaineWebber, Inc. shall be retained by the NASD, Inc. Respondent Kirby L. Hatchett is liable and shall pay to claimant PaineWebber, Inc. \$575.00 as reimbursement of the filing fee.

AFFIRMATION

I, **MARY ANN TUNICK**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of the Arbitrator

DATE OF DECISION: September 23, 1996