

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Antone W. Nocero,

Claimant,

v.

PaineWebber, Inc.,
and David B. Rees,

Respondents,

and

No. 96-00484

PaineWebber, Inc.,

Cross-Claimant,

v.

David B. Rees,

Cross-Respondent.

REPRESENTATION OF PARTIES

Claimant Antone W. Nocero ("Claimant") was represented by Anthony V. Trogan, Esq. of Weisman Trogan Young & Schloss, PC, located in Bingham Farms, Michigan.

Respondent and Cross-Claimant PaineWebber, Inc. ("PWI" or "Cross-Claimant") was represented by Lisa Catalano Tillem, Esq. of PaineWebber, Inc., located in Weehawken, New Jersey.

Respondent and Cross-Respondent David B. Rees ("Rees" or "Cross-Respondent") appeared pro se.

CASE INFORMATION

The Statement of Claim was filed on or about February 1, 1996. Claimant's Submission Agreement was signed on January 26, 1996.

Claimant Antone W. Nocero reached a settlement with Respondents PaineWebber, Inc. and David B. Rees.

Cross-Claimant PWI's Statement of Answer and Cross-Claim was filed on or about April 24, 1996. Cross-Claimant PWI's letter clarifying the amount sought in the Cross-Claim was filed on or about November 7, 1996. Cross-Claimant PWI's Submission Agreement was signed on April 23, 1996, by Lisa Catalano Tillem, Divisional Counsel of PaineWebber, Inc.

Cross-Respondent Rees' Statement of Answer was filed on or about April 30, 1996. NASD Regulation, Inc. Office of Dispute Resolution has no record of a signed submission to arbitration from Cross-Respondent Rees.

HEARING INFORMATION

Pursuant to Section 10303(a) of the NASD Code of Arbitration Procedure (the "Code"), PWI and Rees waived their right to hearing in writing, and requested that this matter be resolved solely upon the pleadings and documentary evidence.

No pre-hearing conferences were held.

There was one (1) hearing session held on November 18, 1996 for consideration of the pleadings and documentary evidence only.

The hearing was held in Detroit, Michigan.

CASE SUMMARY

Claimant Antone W. Nocero alleged that he had an account through PaineWebber, and that David B. Rees was his account representative. Claimant maintained that, while Rees was working for PaineWebber, Rees told Claimant that he needed money badly, and that Claimant loaned Rees a total of \$10,500. Claimant asserted that Rees never repaid the money to Claimant. Claimant also contended that Rees sold Claimant a limited partnership, Uniprop Income Fund II, which was a

limited partnership owned by Rees. Claimant alleged that Claimant's check was written directly to Rees and not to Paine Webber.

Prior to the hearing, Claimant Antone W. Nocero reached a settlement with Respondents PaineWebber, Inc. and David B. Rees.

Cross-Claimant PaineWebber, Inc. alleged that it was entitled to full contribution and indemnification from Cross-Respondent David B. Rees. PWI asserted that it had been wrongfully named as a Respondent in this matter. PWI contended that PWI had no connection to the sale of the limited partnership from Rees to the Claimant. PWI alleged that it had no first hand knowledge of any private dealings between Claimant and Rees. PWI made the following legal claims: (1) contribution; (2) indemnity; and (3) breach of contract.

In his Statement of Answer, Cross-Respondent David B. Rees contended that he had never denied borrowing money or selling the limited partnership to the Claimant. Rees asserted that he never refused to pay Claimant on the loan. Rees asserted that the Claimant loaned Rees the money as a friend and not as his broker.

RELIEF REQUESTED

Cross-Claimant PaineWebber, Inc. requested an award in the amount of \$6,484 for contribution and indemnification for its settlement with Claimant Antone W. Nocero.

OTHER ISSUES CONSIDERED & DECIDED

On November 8, 1996 the parties were advised that Arbitrator Charles A. Barlow had been re-classified as a public arbitrator pursuant to Section 10308 of the Code. The parties were advised that if the parties wished to have another industry arbitrator appointed, the parties should contact NASD Regulation, Inc. Office of Dispute Resolution no later than November 12, 1996. NASD Regulation, Inc. Office of Dispute Resolution has no record that the parties objected to Arbitrator Barlow remaining on the panel.

Cross-Respondent David B. Rees did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to §10301 of the NASD Code of Arbitration Procedure and having answered the claim is bound by the determination of the arbitration panel on all issues submitted.

AWARD

After considering the pleadings, and the evidence presented, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. That the Cross-Claim is denied in its entirety with prejudice;
2. That Cross-Respondent David B. Rees shall reimburse Cross-Claimant PaineWebber, Inc. for its hearing session deposit in the amount of Six Hundred Dollars and No Cents (\$600); and
3. That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$600 per hearing session and \$300 for each pre-hearing conference, if any. There were no pre-hearing conferences and there was one (1) hearing sessions x \$600 = \$600 in forum fees. Pursuant to §10332(b) of the Code, a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$100 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant Antone W. Nocero.

Pursuant to §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$500 and shall **retain** as forum fees the hearing session deposit in the amount of \$600 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Cross-Claimant PaineWebber, Inc.

Pursuant to §10333 of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$200 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Cross-Claimant PaineWebber, Inc.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Concurring Arbitrators' Signature

\s\ Barry Goldman
Barry Goldman, Esq.
Chairperson
Public Arbitrator

December 20, 1996
Dated:

\s\ A. Robert Bliven
A. Robert Bliven
Panelist
Public Arbitrator

December 11, 1996
Dated:

\s\ Charles A. Barlow
Charles A. Barlow
Panelist
Public Arbitrator

December 20, 1996
Dated:

For NASD Regulation use only:
Date Award served on the parties: January 2, 1997