

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of Arbitration Between

PaineWebber, Inc.,

Claimant,

and

No. 96-02756

Harold C. Kaffie, Jr., Gregory D. Goodman,
Walter P. Thompson, Corporate Securities Group, Inc.,
and Kaffie Goodman & Thompson, Inc.,

Respondents.

REPRESENTATION OF PARTIES

Claimant PaineWebber, Inc. was represented by Joel Held, Esquire of Arter & Hadden, located in Dallas, Texas.

Respondents Harold C. Kaffie, Jr., Gregory D. Goodman, Walter P. Thompson, Corporate Securities Group, Inc., and Kaffie Goodman & Thompson, Inc. were represented by Corbet F. Bryant, Jr., Esquire of Carrington, Coleman, Sloman & Blumenthal, located in Dallas, Texas.

CASE INFORMATION

Claimant PaineWebber's Statement of Claim was filed on or about June 27, 1996. Claimant PaineWebber, Inc.'s Amended Statement of Claim and Answer to Respondents' Counterclaim was filed on or about December 5, 1996. Claimant PaineWebber, Inc.'s Submission Agreement was signed by Gary Stegeland, Esquire, but was not dated.

Respondents Harold C. Kaffie, Jr., Gregory D. Goodman, and Walter P. Thompson's Statement of Answer and Counterclaim was filed on or about September 6, 1996. The Statement of Answer of Respondent Kaffie Goodman & Thompson, Inc. and Amended Answer of Respondents Harold C. Kaffie, Jr., Gregory D. Goodman, Walter P. Thompson was filed on or about January 13, 1997. Respondent Corporate Securities Group, Inc.'s Statement of Answer and Counterclaim was filed on or about January 27, 1997. Respondent Harold C. Kaffie, Jr.'s Submission Agreement was signed on September 5, 1996. Respondent Gregory D. Goodman's Submission Agreement was signed on September 5, 1996. Respondent Walter P. Thompson's Submission Agreement was signed on September 5, 1996. Respondent Corporate Securities Group, Inc.'s Submission Agreement was signed on December 23, 1996 by Gregory Tendrich, Esquire, Assistant General Counsel of Corporate

Securities Group, Inc. Respondent Kaffie Goodman & Thompson, Inc.'s Submission Agreement was signed on January 30, 1997 by Gregory D. Goodman, Vice President.

HEARING INFORMATION

No pre-hearing conferences were held.

The hearing was held on: April 14, 1997 for two (2) sessions; April 15, 1997 for two (2) sessions; April 16, 1997 for two (2) sessions; and April 17, 1997 for two (2) sessions.

The hearing was held in Houston, Texas.

CASE SUMMARY

Claimant PaineWebber, Inc. ("Claimant" or "PaineWebber") brought this action to recover damages it allegedly sustained from an unfair competitive advantage acquired by Respondents Harold C. Kaffie, Jr. ("Kaffie"), Gregory D. Goodman ("Goodman"), Walter P. Thompson ("Thompson") (hereinafter collectively referred to as "Individual Respondents"), Corporate Securities Group, Inc. ("CSG"), and Kaffie Goodman & Thompson, Inc. ("KG&T") (hereinafter Individual Respondents, CSG, and KG&T will be collectively referred to as "Respondents").

According to Claimant, Respondents Kaffie, Goodman, Thompson, and KG&T, actively aided and assisted by CSG, fully aware of the nature and consequences of their actions, used their employment by PaineWebber and the information acquired thereby, to gain an unfair competitive advantage against PaineWebber through the use of illegal, improper and otherwise prohibited conduct. Claimant asserted that during a period of several months prior to resigning from PaineWebber in June 1996, the Individual Respondents organized KG&T to compete against PaineWebber, hired an employee to help compete against PaineWebber and negotiated and reached agreement with CSG to compete against PaineWebber. Claimant alleged that the Individual Respondents and KG&T with the help of CSG: (1) successfully solicited more than 30% of the account executives away from the PaineWebber Corpus Christi office; (2) successfully solicited approximately 30% of the assets under management the PaineWebber Corpus Christi office; (3) successfully solicited PaineWebber client accounts representing approximately 40% of the PaineWebber Corpus Christi office gross revenue; and (4) successfully solicited approximately 80% of PaineWebber clients assets for accounts regarding which the Individual Respondents were the named account executive(s).

Claimant's causes of action included the following: (1) violation of Texas Securities Act by all Respondents; (2) violation of New York Stock Exchange rules by Individual Respondents and NASD rules by Individual Respondents and CSG; (3) unfair competition - raiding by all Respondents; (4) fraud by all Respondents; (5) breach of contract by Individual Respondents; (6) breach of contract by Kaffie and Goodman; and (7) breach of fiduciary duty by Individual Respondents.

Individual Respondents and KG&T denied the allegations set forth in the Statement of Claim. Individual Respondents and KG&T asserted the following defenses: (1) The written agreements upon which PaineWebber sued expired as the three-year training period had been completed prior to any of the alleged improper activities, and Kaffie and Goodman did not breach and fully complied with those agreements. (2) If the documents were not clearly limited to three years, at least with regard to the restrictive covenant portions thereof, then the documents were ambiguous and this Panel was requested to determine the intent of the parties by reference to parol evidence and other circumstances. (3) If the written Training agreements upon which PaineWebber relies were to be literally taken as having the meanings urged by PaineWebber, then they were in violation of public policy, restrained trade, were unreasonable, and were thus unenforceable under the law. (4) PaineWebber itself had unfairly competed with Respondents and was not entitled to any recovery herein. (5) The written agreements upon which suit was brought contain over broad restrictions that violated the law and were unreasonable and thus not enforceable. (6) PaineWebber itself violated the NASD's Rules of Fair Practice and did not have any cause of action under those rules. (7) PaineWebber was estopped from claiming that certain information was proprietary or confidential. (8) PaineWebber had no standing to assert any violation of the Texas Securities Act because the penalties it sought were not recoverable from a competing broker-dealer; Respondents did not violate the Texas Securities Act, either, because every transaction done at any time was accomplished by a properly registered individual functioning pursuant to proper licensing. (9) There was no raiding or unfair competition. (10) PaineWebber had no cause of action for fraud because none of the elements existed in this case. (11) PaineWebber cannot recover under the PaineWebber Code of Conduct. (12) PaineWebber cannot recover monetary damages under the non-competition covenants asserted since they were unenforceable as drawn. (13) There was no basis for an award of any punitive damages, or actual damages, against any Respondent.

Respondent CSG denied the allegations set forth in the Statement of Claim. CSG asserted the following defenses: (1) CSG had not engaged in raiding. (2) There had been no violation of the Texas Securities Act. (3) There had been no violation of any New York Stock Exchange or NASD rule by CSG. (4) CSG had not violated NYSE Rule 346 or NASD Rule 3030 with regard to outside business activities. (5) There had been no unfair competition by CSG with PaineWebber. (6) CSG had not committed fraud. (7) There did not appear to be any allegations of breach of contract against CSG, but CSG also stated that it disputed that there had been any breach of contract by any Respondent in this matter, including breach of any alleged non-competition covenant; CSG further disagreed and disputed that there had been any breach of fiduciary duty by any of the Individual Respondents. (8) PaineWebber's own campaign of slander and libel against CSG reflected the unfair competition and unclean hands that PaineWebber itself brought to this arbitration.

Individual Respondents and CSG brought a counterclaim against Claimant to recover damages resulting from Claimant's alleged unfair conversion of personal belongings, unfair competition, liable, slander, and tortious interference with business relationships.

Individual Respondents claimed that after they resigned from PaineWebber, PaineWebber locked them out of their offices excluding them from personal possessions, which constituted conversion and were without justification. Individual Respondents asserted that PaineWebber engaged in an unremitting campaign of slander and libel against Respondents, and, as a result, PaineWebber had succeeded in preventing some of the customers who otherwise would have gone to Respondents' new location from transferring. Individual Respondents further asserted that PaineWebber had also tortiously interfered with the business relationships of Individual Respondents with others in the securities industry by forcing others to cease doing business with Individual Respondents in order to put them out of business.

Respondent CSG joined Individual Respondents' counterclaim and added that as PaineWebber engaged in its campaign of slander and libel, unfair competition, and tortious interference with business relations of all the Respondents, PaineWebber expressly and indirectly attacked CSG as the licensor and its related entity as a clearing firm.

Claimant denied the allegations set forth in the counterclaims. According to Claimant, Individual Respondents were not, at anytime, prevented from entering their offices. Claimant asserted that the Individual Respondents and CSG failed to present the basic elements for a basic defamation cause of action.

RELIEF REQUESTED

In the Statement of Claim, Claimant PaineWebber, Inc. requested an award for actual damages in the amount of \$1,950,000, plus punitive damages and attorney fees.

Respondents Harold C. Kaffie, Jr., Gregory D. Goodman, Walter P. Thompson, and Kaffie Goodman & Thompson, Inc. requested that the claims asserted against them be dismissed in their entirety and that they be awarded their costs and attorneys' fees. In their Counterclaim, Respondents Harold C. Kaffie, Jr., Gregory D. Goodman, and Walter P. Thompson also requested an award for actual damages in excess of \$1,500,000 and punitive damages in the amount of \$3,000,000. Respondent Corporate Securities Group, Inc. requested that an award be rendered such that Claimant PaineWebber, Inc. receive nothing and that PaineWebber, Inc. be required to pay all costs of this arbitration, including experts' fees, attorneys' fees, filing fees, and pay an award on the counterclaim of Harold C. Kaffie, Jr., Gregory D. Goodman, and Walter P. Thompson, as they request, and in the total amount of actual and punitive damages to Corporate Securities Group, Inc. of no more than \$500,000. Respondent Corporate Securities Group, Inc. also requested that it recover 10% of the figure which the Panel may award to Harold C. Kaffie, Jr., Gregory D. Goodman, Walter P. Thompson as actual damages.

OTHER ISSUES CONSIDERED AND DECIDED

Initially, Claimant PaineWebber, Inc. also named Elodia Cavazos as a Respondent. Pursuant to an agreement identified in Claimant PaineWebber, Inc.'s letter dated November 25, 1996, PaineWebber, Inc.'s claim against Elodia Cavazos and Elodia Cavazos' counterclaim against PaineWebber, Inc. were withdrawn and were dismissed without prejudice.

At the hearing in this matter, the undersigned panel of arbitrators asked for and received from the parties handwritten, updated pleadings whereby Claimant PaineWebber, Inc. alleged raiding and unfair competition and Respondents Harold C. Kaffie, Jr., Gregory D. Goodman, Walter P. Thompson, and Corporate Securities Group, Inc. counterclaimed with conversion, libel and slander, and unfair competition. Each side requested actual damages in excess of \$1,000,000.

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 original(s) remain on file with the NASD Regulation, Inc. Office of Dispute Resolution.

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. That Claimant PaineWebber, Inc. is liable for and shall pay Respondents Harold C. Kaffie, Jr., Gregory D. Goodman, Walter P. Thompson and Corporate Securities Group, Inc. actual damages in the amount of \$400,000 and punitive damages in the amount of \$1,000,000 to be allocated as follows: \$420,000 to Harold C. Kaffie, Jr.; \$420,000 to Gregory D. Goodman; \$420,000 to Walter P. Thompson; and \$140,000 to Corporate Securities Group, Inc.. In deciding to award actual and punitive damages, the undersigned arbitrators considered the pleadings, the evidence and the testimony presented by the parties;
2. That Claimant PaineWebber, Inc. is liable for and shall pay Respondents Harold C. Kaffie, Jr., Gregory D. Goodman, Walter P. Thompson, and Corporate Securities Group, Inc. simple interest at the rate of 10% per annum on the total amount awarded in actual and punitive damages, \$1,400,000, which will begin to accrue on the date this award is served on the parties until paid;
3. That Claimant PaineWebber, Inc. is liable for and shall pay Respondents Harold C. Kaffie, Jr., Gregory D. Goodman, Walter P. Thompson, and Corporate Securities

Group, Inc. attorney's fees in the amount of \$75,000. In determining to award attorney's fees, the undersigned arbitrators considered the pleadings, the testimony and the evidence presented by the parties;

4. The Statement of Claim and Amended Statement of Claim submitted by Claimant PaineWebber, Inc. are hereby denied in their entirety and dismissed with prejudice; and
5. 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 were eight (8) hearing sessions $\times \$600 = \$4,800$ in forum fees. Pursuant to § 10205(b) of the NASD Code of Arbitration Procedure (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 § 10205(c) of the Code, the 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 the NASD Regulation, Inc. Office of Dispute Resolution by Claimant PaineWebber, Inc. In accordance with § 10205(h), the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable surcharge of \$2,500 previously submitted by Claimant PaineWebber, Inc.

Claimant PaineWebber, Inc. is liable for and shall pay the NASD Regulation, Inc., pursuant to § 10333 of the Code the \$350 non-refundable member surcharge.

Pursuant to § 10205(c) of the Code, the 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 the NASD Regulation, Inc. Office of Dispute Resolution by Respondent Corporate Securities Group, Inc.

In accordance with § 10205(c) of the Code, the 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 \$1,000 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Respondents Harold C. Kaffie, Gregory D. Goodman and Walter P. Thompson.

Pursuant to § 10205 of the Code, Claimant PaineWebber, Inc. is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$2,600 in additional forum fees. Claimant PaineWebber, Inc. is liable for and shall pay Respondent Corporate Securities Group, Inc. \$1,500 as reimbursement of the \$500 filing fee and \$1,000 hearing session deposit. Claimant PaineWebber, Inc. is also liable for and shall pay to Respondents Harold C. Kaffie, Gregory G. Goodman and Walter P. Thompson \$1,100 as reimbursement of their \$500 filing fee and \$600 hearing session deposit.

Pursuant to § 10333 of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge in the amount of \$350 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Respondent Corporate Securities Group, Inc.

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

Concurring Arbitrators' Signatures

Stephen C. Thayer, Esquire

May 15, 1997

Stephen C. Thayer, Esquire
Chairperson
Industry Arbitrator

Dated:

Ronald R. Simpson

May 15, 1997

Ronald R. Simpson
Panelist
Industry Arbitrator

Dated:

Charles V. Dwyer, Jr.

May 15, 1997

Charles V. Dwyer, Jr.
Panelist
Industry Arbitrator

Dated:

For NASD use only:

Date Award was served on the parties: May 19, 1997