

AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC. OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimant

PaineWebber, Incorporated

and

Case Number 96-03913

Name of Respondent

Daniel F. Barrett

REPRESENTATION OF PARTIES

Claimant, PaineWebber, Inc., was represented by Patricia E. Cowart, Esquire of PaineWebber, Inc. located in Fort Lauderdale, Florida.

Respondent, Daniel F. Barrett, did not file an answer and did not appear at the hearing.

CASE INFORMATION

The Statement of Claim was filed by Claimant, PaineWebber, Inc., on or about August 30, 1996.

The Submission Agreement of Claimant, PaineWebber, Inc., was signed on August 30, 1996 by Thomas M. Mierswa, Jr., Corporate Vice President.

HEARING INFORMATION

The hearing was held on August 12, 1997 in Houston, Texas for a total of one (1) hearing session.

CASE SUMMARY

Claimant, PaineWebber, Inc. ("PaineWebber") alleged that Respondent, Daniel Barrett ("Barrett") failed to pay the balance of a settlement payment plan for an employee forgivable loan ("EFL") which he owed after voluntarily termination from PaineWebber. As memorialized in a Promissory Note executed by Barrett, the original loan was said to be \$63,400, payable in four equal annual installments of \$15,850, each payable on September 29, in 1992, 1993, 1994 and 1995. Claimant alleged that when Barrett was voluntarily terminated on October 2, 1992, he thereafter failed to make payments on the final two installments together totalling \$31,700, in addition to \$229.83 in Medicare arrears. Claimant also alleged that after it brought an action against Barrett before the NASD Regulation, Inc. Office of Dispute Resolution, PaineWebber and Barrett reached a settlement in October, 1994. Claimant alleged that according to the terms of the settlement, \$25,000 would be paid by Barrett in monthly installments in satisfaction of the total amount owed. Claimant asserted that after a year of payments, Barrett's payments began to be missed, late or less than the agreed payment amount, with the last payment being made on April 29, 1996 and the total paid, only \$10,150. Therefore, Claimant alleged that Barrett still owed PaineWebber the difference between the original debt of \$31,929.83 and the \$10,150 already paid, in addition to other costs relating to their claim.

Respondent, Daniel Barrett, did not file a Statement of Answer, nor did he appear at the Arbitration hearing.

RELIEF REQUESTED

Claimant, PaineWebber, Inc., requested an award in the amount of \$21,779.83 for the balance due on the Promissory Note, \$9,623 in interest, \$2,825 in costs and \$750 in attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file and the representations made by/on behalf of the Claimant, the panel determined that Respondent, Daniel F. Barrett, had been properly served with the Statement of Claim pursuant to §10302 and §10314 of the NASD Code of Arbitration Procedure (the "Code"). The panel also determined that Respondent, Daniel F. Barrett had received due notice of the hearing as required under §10315 of the Code and that arbitration of the matter would proceed pursuant to §10318 of the Code.

Respondent, Daniel F. Barrett did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but was required to submit to arbitration

pursuant to §10201 of the NASD Code of Arbitration Procedure (the "Code") and is bound by the determination of the arbitration panel on all issues submitted.

On or about August 30, 1996, Claimant, PaineWebber, Inc., submitted a motion to preclude Respondent from presenting any matter, arguments or defenses at the hearing. After reviewing the motion and related submissions, the undersigned arbitrators decided to grant the motion on or about April 24, 1997.

The party present at the hearing have agreed that the Award in this matter may be executed in counterpart copies and 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 including the provisions contained in the Promissory Note, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Daniel F. Barrett is liable for and shall pay to PaineWebber, Inc. the sum of \$34,977.83 in damages which includes actual damages, interest, attorneys' fees and costs.
2. Other than forum fees addressed below, all other claims and requests for relief not specifically granted herein are denied in their entirety and dismissed 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 was one (1) hearing session x \$600 = \$600 in forum fees. Pursuant to §10205(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 §10205(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$500, the \$200 surcharge imposed pursuant to §10333 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.

Arbitrators' Signatures:

Thomas D. Tays, Esquire
Thomas D. Tays, Esquire
Chairman
Industry Arbitrator

September 8, 1997
Dated:

Larry J. Sklar
Larry J. Sklar
Panelist
Industry Arbitrator

September 4, 1997
Dated:

Nathan Levy
Nathan Levy
Panelist
Industry Arbitrator

September 8, 1997
Dated:

For NASD Regulation, Inc. use only:
Date served: September 12, 1997