

NASD REGULATION AWARD

In the Matter of the Arbitration Between

Name of Claimant

Paul M. Higbee

96-04719

Name of Respondent

PaineWebber, Inc.

REPRESENTATION

For claimant Paul M. Higbee ("claimant") appeared James D. Essex, Esq., of the firm Vladeck, Waldman, Elias & Engelhard, P.C., located in New York, New York.

For respondent PaineWebber, Inc. ("respondent") appeared Frances M. Maloney, Esq., of the firm Epstein Becker & Green, P.C., located in New York, New York.

CASE INFORMATION

Statement of Claim was filed on October 22, 1996. Claimant's Submission Agreement was signed on October 15, 1996.

Statement of Answer was filed on February 4, 1997. Respondent's Submission Agreement was signed on February 27, 1997.

HEARING INFORMATION

Pre-Hearing Conference:	June 11, 1997	-	One Arbitrator
Hearing Dates/Sessions:	June 17, 1997	-	Two Sessions
	June 18, 1997	-	Two Sessions
	September 9, 1997	-	Two Sessions
	September 10, 1997	-	Two Sessions
	September 11, 1997	-	Two Sessions

The hearings were conducted at the offices of NASD Regulation, Inc., located in New York, New York.

CASE SUMMARY

Claimant alleged that respondent improperly redeemed debentures he purchased under PaineWebber's Key Executive Equity Program III ("KEEP III"), despite the fact that he left respondent's employ for "good reason" within the meaning of the KEEP III program and has not competed with respondent since he left. Claimant further alleged that respondent caused a forfeiture of stock he was awarded under respondent's 1993, 1994 and 1995 Stock Award Plans as a component of his bonus payments for those years, and forced him to withdraw his investment in two limited partnerships, the PW Partners 1993 L.P. and the PW Partners 1993 Dedicated L.P. In addition, claimant alleged that respondent failed to pay him vested benefits he is due under the PaineWebber Investment Banking Division's Incentive Compensation Plan ("Incentive Compensation Plan") and caused a forfeiture of other benefits he was due under the Incentive Compensation Plan, including \$85,000.00 in warrants that Robert Pangia, then head of PaineWebber's Investment Banking Division, promised he would be paid as part of his 1995 bonus.

Respondent maintained that claimant gave up any rights he had while employed at PaineWebber under any compensation and investment plans when he voluntarily resigned his employment. Respondent also maintained that, since claimant no longer has any rights to the compensation and investment plans he enjoyed while an employee of PaineWebber, claimant's claims had no merit.

RELIEF REQUESTED

Claimant requested that the arbitration panel :

1. award him the KEEP III debenture;
2. award him the remaining stock pursuant to the 1993, 1994, and 1995 Stock Award Plans;
3. direct respondent to reinstate his investment in the PW Partners 1993 L.P. and to make him whole for having forced him to withdraw from PW Partners 1993 L.P. upon the termination of his employment;
4. direct respondent to reinstate his investment in the PW Partners 1993 Dedicated L.P. and make him whole for having forced him to withdraw from PW Partners 1993 Dedicated L.P. upon the termination of his employment;
5. award him the units in the Incentive Compensation Plan that have been withheld from him, including the \$85,000.00 in warrants in that Plan awarded to him as part of his 1995 bonus;
6. award him attorney's fees and costs in this proceeding; and
7. award him such other relief as the panel deems appropriate.

Respondent requested that the Statement of Claim be dismissed in its entirety, together with costs to respondent.

OTHER ISSUES CONSIDERED AND DECIDED

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 NASD Regulation, Inc.

At the hearing, claimant's Claim VI (PW Partners 1993 Dedicated L.P.) was withdrawn.

Subsequent to the hearings, claimant made a motion to strike respondent's post-hearing submission dated September 19, 1997. The panel has denied this request.

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 be and hereby is liable and shall pay claimant the sum of \$168,768.00 under Claim VII (Incentive Compensation Plan).
2. Claimant's Claim I (KEEP III), Claim II (1993 Stock Award Plan), Claim III (1994 Stock Award Plan), Claim IV (1995 Stock Award Plan), and Claim V (PW Partners 1993 L.P.) are denied in their entirety. Arbitrator Philip Loomis dissented with respect to the panel's denial of Claim I (KEEP III). Arbitrator Loomis believed that the evidence was abundantly clear that claimant was extremely careful not to compete from his position at Bankers Trust to the disadvantage of PaineWebber.
3. Each party shall bear their respective costs, including attorneys' fees.
4. All other claims are denied.

FORUM FEES

Pursuant to Rule 10205(c) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$500.00 non-refundable filing fee submitted by claimant and have assessed the following forum fees:

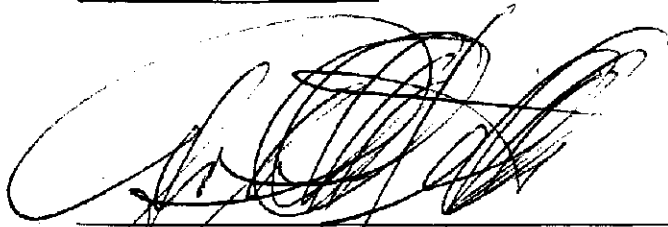
1 pre-hearing conference x \$300.00	= \$ 300.00
10 hearing sessions X \$1,000.00	= <u>\$10,000.00</u>
Total forum fees	= \$10,300.00

The arbitrators have assessed forum fees as follows:

1. Claimant be and hereby is liable for the sum of \$5,150.00, representing one-half of the total amount of forum fees assessed. Claimant previously deposited \$1,000.00 with NASD Regulation, Inc. and, therefore, claimant shall pay the balance of \$4,150.00
2. Respondent be and hereby is liable and shall pay the sum of \$5,150.00, representing one-half of the total amount of forum fees assessed.
3. Respondent be and hereby is liable and shall pay the sum of \$500.00, representing the member surcharge.

Fees are payable to NASD Regulation, Inc.

Arbitrators' Signatures




John J. O'Neill, Esq.
Chairman-Industry Arbitrator

Kevin C. Ahearn
Industry Arbitrator

Philip C. Loomis, CFA
Industry Arbitrator

Date of decision: November 14, 1997

I, John J. O'Neill, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.



John J. O'Neill, Esq.

Arbitrators' Signatures

John J. O'Neill, Esq.
Chairman-Industry Arbitrator

Kevin C. Ahearn
Kevin C. Ahearn
Industry Arbitrator

Philip C. Loomis, CFA
Industry Arbitrator

Date of decision: November 14, 1997

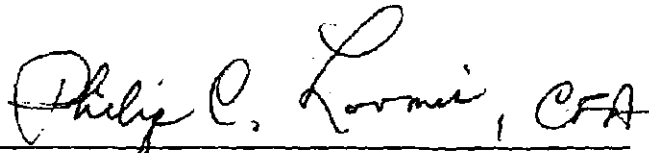
I, **Kevin C. Ahearn**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Kevin C. Ahearn
Kevin C. Ahearn

Arbitrators' Signatures

John J. O'Neill, Esq.
Chairman-Industry Arbitrator

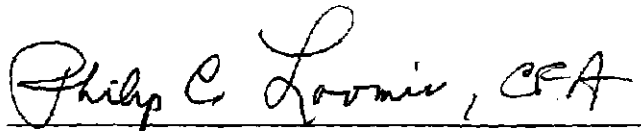
Kevin C. Ahearn
Industry Arbitrator



Philip C. Loomis, CFA
Industry Arbitrator

Date of decision: November 14, 1997

I, Philip C. Loomis, CFA, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.



Philip C. Loomis, CFA