

NASD REGULATION, INC.  
AWARD

9901022

In the Matter of the Arbitration Between

Name of Claimants

PaineWebber Incorporated

vs

Case No.  
96 5676

Name of Respondent

Walter N. Iwachiw  
Kidder Peabody & Company, Incorporated  
Herzog, Heine, Geduld, Inc.  
John Carparelli  
Fred Warren  
Kevin Vesey  
Leonard Vinci

REPRESENTATION

For Claimant PaineWebber Incorporated ("Claimant") appeared Lisa Catalano Tillem, Esq., Corporate Vice President for Claimant, located in Weehawken, New Jersey.

Respondent Walter N. Iwachiw ("Iwachiw") appeared pro se

For Respondents Kidder Peabody & Company, Incorporated ("Kidder Peabody"), John Carparelli ("Carparelli"), Fred Warren ("Warren"), Kevin Vesey ("Vesey"), and Leonard Vinci ("Vinci") (collectively "the Kidder Respondents") appeared Thomas A. Dubbs, Esq., of the law offices Goodkind, Labaton, Rudoff & Sucharow, LLP, located in New York, New York.

For Respondent Herzog, Heine, Geduld, Inc. ("Herzog") appeared Charles Christofilis, Esq., Senior Vice President and General Counsel for Herzog located in Jersey City, New Jersey.

CASE INFORMATION

Claimant's Statement of Claim was filed on December 17, 1996.  
Claimant's Submission Agreement was signed on December 17, 1996.  
Claimant's Reply to Answer of Iwachiw was filed on March 17, 1997

Iwachiw's Statement of Answer was filed on February 21, 1996.  
Iwachiw's Reply to Answer of PaineWebber and Kidder Peabody was filed on April 21, 1997.  
Iwachiw's Statement of Claim against the Kidder Respondents and Herzog was filed on August 22, 1997.

Iwachiw's Submission Agreement was signed August 28, 1997

9901022

A Joint Statement of Answer was filed by the Kidder Respondents on October 8, 1997.

Kidder Peabody's Submission Agreement was signed on October 8, 1997.

Carparelli's Submission Agreement was signed on October 15, 1997 and December 31, 1997

Warren's Submission Agreement was signed on December 24, 1997.

Vesey's Submission Agreement was signed on October 17, 1997.

Vinci did not file a properly executed Submission Agreement.

Herzog's Statement of Answer was filed on March 13, 1998.

Herzog did not file a properly executed Submission Agreement,

### HEARING INFORMATION

Pre-Hearing Conferences:	August 20, 1997	1 session
	March 6, 1998	1 session
Hearing Dates/Sessions:	September 24, 1998	3 sessions
	September 25, 1998	1 session
	November 3, 1998	3 sessions

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

### CASE SUMMARY

Claimant alleged that, on August 8, 1994, Iwachiw began trading in California Micro Devices Corp. ("CAMDE"), both buying and selling. Claimant contended that, in or about January, 1995, due to his trading activity, Iwachiw incurred a margin call of approximately \$51,000.00. Claimant maintained that, after Iwachiw was informed of the call amount and that it had to be met by Friday January 27, 1995, Iwachiw assured Carparelli that he would 'take care of it' and continued to buy and sell CAMDE during the day. Claimant further maintained that, on January 26, 1995, CAMDE was delisted from NASDAQ, but continued to trade on Instanet with one market maker, Herzog. Claimant contended that, on or about January 30, 1995, Carparelli arranged a conference call with Iwachiw and various other PaineWebber employees and that, at the conclusion of the conference call, Iwachiw agreed to bring in a bank check by January 30, 1995. Claimant alleged that, on or about January 30, 1995, Iwachiw advised it that he would not be able to meet his call in any manner and agreed that it should cover his short position in the open market. Claimant further alleged that, as directed, it took market action to cover Iwachiw's short position and, when the final trade settled, Iwachiw's account was left with an unsecured debit balance of approximately \$2,000.00. Claimant maintained that, due to further checking activity, deposits and margin interest charges, the debit balance in Iwachiw's account at the end of February, 1995 was \$2,156.44.

In Iwachiw's February 21, 1996 submission he asserted claims against PaineWebber, Kidder Peabody and Carparelli. Iwachiw contended that, although starting on January 26, 1995 he demanded that orders be placed to buy CAMDE starting at 25 cents per share and to be moved

9901022

upwards, those trading orders were refused. Iwachiw alleged that, on or about March 15, 1994, Carparelli promised him that he would receive direct access to the traders to execute his buy and sell orders and that, as a result of this assurance, he abandoned his attempts to align with "SOS trading." In addition, Iwachiw alleged that it was indicated that he would benefit from the market maker status of Kidder Peabody which was another reason not to switch his Charles Schwab account to a "SOS trader." Based upon the foregoing, Iwachiw asserted claims for breach of contract, misrepresentations and failure to place an order. In his August 22, 1997 submission, Iwachiw asserted claims against the Kidder Respondents and Herzog.

In its Reply to the Counterclaim, PaineWebber maintained that Iwachiw placed a GTC order to buy CAMDE at 25 cents per share to cover a short position when the market was 3 3/4 - 4 1/2. In addition, PaineWebber again contended that Iwachiw failed to meet his maintenance calls and that, as a result, his account was liquidated.

The Kidder Respondents contended that because Iwachiw placed a bid at 25 cents for CAMDE and this stock was trading in the range of 3 1/2 to 4 1/2, his order could not be filled. In addition, the Kidder Respondents maintained that Iwachiw's third-party claims were barred by the legal doctrines of ratification, waiver, laches and estoppel. The individual Kidder Respondents also asserted counterclaims against Iwachiw for malicious prosecution, abuse of process and negligence.

Herzog, with the permission of the panel of arbitrators in this matter, entered a General Denial of any and all claims against it by Iwachiw.

#### **RELIEF REQUESTED**

Claimant requested actual damages in the amount of \$2,156,46 plus interest, attorneys' fees and the costs of this arbitration.

Iwachiw requested a dismissal of the Statement of Claim in its entirety. In his various submissions, Iwachiw sought damages ranging from \$156,000.00 to \$13 million to \$163 trillion. Iwachiw also sought costs, fees, and disbursements of the action.

Claimant requested that Iwachiw's counterclaims be dismissed in their entirety

The Kidder Respondents requested that Iwachiw's claims against them be dismissed in their entirety. In addition, the individual Kidder Respondents each sought \$50,000.00 in compensatory damages against Iwachiw.

Herzog requested that all claims against it be dismissed in their entirety

#### **OTHER ISSUES CONSIDERED & 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.

9901022

**AWARD**

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

1. Iwachiw be and hereby is liable for and shall pay to Claimant the sum of **TWO THOUSAND ONE HUNDRED FIFTY SIX DOLI ARS (\$2,156.00)** in compensatory damages.
2. Iwachiw be and hereby is liable for and shall pay to Claimant interest in the amount of \$422.00.
3. Claimant's requests for attorneys' fees and costs are hereby denied in their entirety.
4. All claims asserted by Iwachiw are hereby denied in their entirety.
5. Based upon the merits of this case, the panel hereby orders that all CRD records referencing this matter be expunged from Carparelli's permanent CRD record by NASD Regulation, Inc.
6. Based upon the merits of this case, the panel hereby orders that all CRD records referencing this matter be expunged from Warren's permanent CRD record by NASD Regulation, Inc.
7. Based upon the merits of this case, the panel hereby orders that all CRD records referencing this matter be expunged from Vesey's permanent CRD record by NASD Regulation, Inc.
8. Based upon the merits of this case, the panel hereby orders that all CRD records referencing this matter be expunged from Vinci's permanent CRD record by NASD Regulation, Inc.
9. All other requests are hereby denied.

**OTHER COSTS**

Pursuant to Rule 10333 of the NASD Code of Arbitration Procedure ("Code"), Claimant has paid NASD Regulation, Inc. the \$100.00 member surcharge previously invoiced.

Pursuant to Rule 10333 of the Code, Kidder, Peabody shall pay to NASD Regulation, Inc. the \$500.00 member surcharge previously invoiced.

Pursuant to Rule 10333 of the Code, Herzog shall pay to NASD Regulation, Inc. the \$500.00 member surcharge previously invoiced.

9901022

FORUM FEES

Pursuant to Rule 10205(c) and Rule 10332(c) of the Code, the arbitrators have determined that NASD Regulation, Inc. will retain the \$500.00 non-refundable filing fee submitted by Claimant and the \$300.00 non-refundable filing fee submitted by Iwachiw. In addition, the arbitrators have determined to assess the following forum fees:

2 Pre-Hearing Conferences (with full panel)	=	\$ 3,000.00
7 Hearing Sessions x \$1,500.00	=	\$10,500.00

Iwachiw be and hereby is liable for the sum of \$13,500.00 representing the total forum fees assessed. Claimant previously deposited \$75.00 with NASD Regulation, Inc., the Individual Kidder Respondents previously deposited \$750.00 with NASD Regulation, Inc., and Iwachiw previously deposited \$650.00 with NASD Regulation, Inc. and therefore, Iwachiw shall pay the balance of \$12,025.00.

Fees are payable to NASD Regulation, Inc

9901022

ARBITRATION PANEL

Melvin Lyon	-	Public Chairperson
Irwin Kahn, Esq.	-	Public Arbitrator
Dean E. Kois	-	Industry Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE

Melvin Lyon  
Melvin Lyon  
Chairperson-Public Arbitrator

Date of decision: January 6, 1999

I, **Melvin Lyon**, 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.

Melvin Lyon  
Melvin Lyon

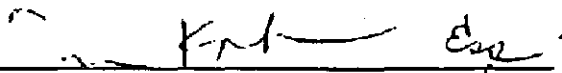
9901022

ARBITRATION PANEL

Melvin Lyon  
Irwin Kahn. Esq.  
Dean E. Kois

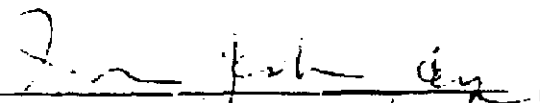
Public Chairperson  
Public Arbitrator  
Industry Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE

  
\_\_\_\_\_  
Irwin Kahn. Esq.  
Public Arbitrator

Date of decision: January 6, 1999

I, Irwin Kahn, 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

  
\_\_\_\_\_  
Irwin Kahn. Esq.