

NASD REGULATION, INC.  
FINAL ORDER

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In the Matter of the Arbitration Between

Name of Claimant

Steven A. Pfeifer

98-00181

Name of Respondent

PaineWebber, Inc.

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**REPRESENTATION**

For Claimant Steven A. Pfeifer ("Claimant") appeared Neal Brickman, Esq., a sole practitioner with offices located in New York, New York.

For Respondent PaineWebber, Inc. ("Respondent") appeared Michael P. Enright, Esq. Assistant General Counsel and Corporate Vice President for Respondent located in Weehawken, New Jersey.

**CASE INFORMATION**

Claimant's Statement of Claim was filed on January 14, 1998.

Claimant's Submission Agreement was signed on January 12, 1998.

Respondent's Statement of Answer was filed on March 9, 1998.

Respondent's Submission Agreement was signed on March 9, 1998.

**HEARING INFORMATION**

Pre-Hearing Conferences:

May 4, 1998

One Session

May 26, 1998

One Session

### **CASE SUMMARY**

Claimant maintained that, on or about August 21, 1995, he commenced his employment with Respondent as a Vice President and that during his employment with Respondent his job performance was excellent. Claimant contended that his agreed to compensation arrangement consisted of a base salary and a bonus to be awarded at the end of each year. Claimant alleged that, although in December 1995 and 1996, he exceeded all of the goals that had been set for him in business plans and appraisal forms, on May 27, 1997, Respondent terminated his employment.

Respondent maintained Claimant was an "employee-at-will" and, therefore, Respondent was free to terminate Claimant's employment at any time without notice or cause. Respondent contended that, pursuant to the terms of its incentive compensation plan, Claimant had to be employed in February 1998 in order to be eligible for any 1997 compensation payments. In addition, Respondent contended that highly compensated employees are eligible to receive a discretionary award of its stock and that the stock vests in three annual installments. Respondent maintained that, pursuant to the terms of its Restricted Stock Award Plans, all unvested stock is forfeited upon termination of employment for any reason other than death, disability, or retirement.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$380,988.20 and punitive damages. In addition, Claimant requested the immediate vesting of his 1995 and 1996 stock awards plus interest, the costs and disbursements of this action, including reasonable attorneys' fees.

Respondent requested that all claims against it be dismissed with prejudice plus its costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that the Final Order in this matter may be executed in counterpart copies or that a handwritten, signed Final Order may be entered. In either case, the parties have agreed to receive conformed copies of the Final Order while the original remains on file with NASD Regulation, Inc.

On March 9, 1998, pursuant to Rule 10304 of the NASD Code of Arbitration Procedure ("Code"), Respondent filed a Motion to Dismiss. During the pre-hearing conference conducted on May 26, 1998, the presiding arbitrators heard oral argument from both parties regarding Respondent's Motion to Dismiss. After due deliberation and consideration of all submissions and arguments, the panel has determined to grant Respondent's Motion to Dismiss. Therefore, all claims against Respondent are hereby denied.

### **OTHER COSTS**

Pursuant to Rule 10333 of the Code, Respondent has paid to NASD Regulation, Inc. the \$1,500.00 member surcharge previously invoiced.

### **FORUM FEES**

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

2 pre-hearing conferences x \$750.00 = \$1,500.00

1. Claimant be and hereby is liable for the sum of \$750.00, representing one-half of the total amount of forum fees assessed. Claimant previously deposited \$750.00 with NASD Regulation, Inc. and, therefore, does not owe any forum fees.

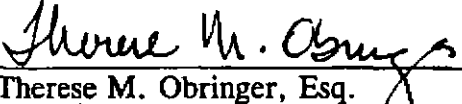
2. Respondent be and hereby is liable for and shall pay to NASD Regulation, Inc. the sum of \$750.00, representing the one-half of the total amount of forum fees assessed.

3. Respondent be and hereby is liable for and shall pay to Claimant the sum of \$250.00 as reimbursement for one-half of the non-refundable filing fee previously paid by Claimant.

**ARBITRATION PANEL**

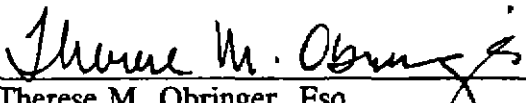
Therese M. Obringer, Esq.	-	Industry Chairperson
James R. Madan	-	Industry Arbitrator
Francis A. Sullivan	-	Industry Arbitrator

**CONCURRING ARBITRATORS' SIGNATURE**

  
Therese M. Obringer, Esq.  
Chairperson-Industry Arbitrator

Date of Decision: June 30, 1998

I, Therese M. Obringer, 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.

  
Therese M. Obringer, Esq.

**ARBITRATION PANEL**

Therese M. Obringer, Esq.	-	Industry Chairperson
James Madan	-	Industry Arbitrator
Francis A. Sullivan	-	Industry Arbitrator

**CONCURRING ARBITRATORS' SIGNATURE**



James Madan  
Industry Arbitrator

Date of Decision: June 30, 1998

I, James Madan, 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.




James Madan

**ARBITRATION PANEL**

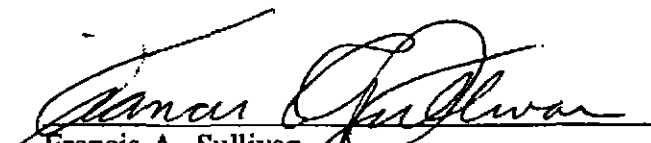
Therese M. Obringer, Esq.	-	Industry Chairperson
James Madan	-	Industry Arbitrator
Francis A. Sullivan	-	Industry Arbitrator

**CONCURRING ARBITRATORS' SIGNATURE**

  
Francis A. Sullivan  
Industry Arbitrator

Date of Decision: June 30, 1998

I, Francis A. Sullivan, 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.

  
Francis A. Sullivan