

AWARD

NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Popular Securities, Inc.

98-04909

Names of Respondents

**PaineWebber, Inc.
Antonio Herrero
Luis Herrero**

REPRESENTATION

For Claimant: Ricardo F. Casellas, Esq. of Fiddler, Gonzalez & Rodriguez, LLP, San Juan, PR.

For Respondents PaineWebber, Inc. ("PaineWebber"), Antonio Herrero and Luis Herrero ("Registered Representatives"): Sara Soto, Esq. of Fowler, White, Burnett, Hurley, Banick & Strickroot, P.A., Miami, FL. Prior to Ms. Soto commencing her representation of Respondents on April 2, 1999, Respondents were represented by Guillermo J. Bobonis, Esq. of Bobonis, Bobonis & Rodriguez Poventud, San Juan, PR.

CASE INFORMATION

Statement of Claim filed on December 23, 1998.

Claimant's Submission Agreement signed on May 28, 1999.

Joint Statement of Answer and Counter-Claim filed by Respondents on February 16, 1999.

Respondents' Submission Agreements signed on May 27, 1999.

Claimant's Reply to Counter-Claim of Respondents filed on February 26, 1999.

HEARING INFORMATION

A telephonic pre-hearing conference which lasted one (1) session was conducted by the Chairperson on January 4, 1999.

The evidentiary hearing which lasted eight (8) sessions was conducted in Boca Raton, Florida on May 24, 26, 27, and 28, 1999.

CASE SUMMARY

Claimant alleged the following: that the Registered Representatives executed certain employment contracts with Claimant; that Registered Representatives breached their contractual obligations with Claimant by misappropriating company property, by divulging and improperly retaining confidential information, and by soliciting clients; that this breach caused Claimant to suffer damages in excess of \$50,000.00; that the Registered Representatives breached their duty of loyalty and confidence to Claimant; that Registered Representatives have a contractual obligation to respect the clients and the relationship of Claimants with its clients; that Respondents knowingly interfered with Claimant's contractual relations; that Respondents intentionally caused the creation of contractual relations with Claimant's customers to the prejudice of Claimant; that Respondents knowingly and intentionally engaged in concerted action to conspire with each other to defraud Claimant and its customers by soliciting a transfer of accounts through promises, misrepresentations, falsehoods, deceit, and duress; that Respondents have violated NASD's industry standards; that Respondent PaineWebber is vicariously liable for the acts and omissions of the Registered Representatives; and, that Respondents are personally, jointly and/or severally liable for all the damages inflicted upon Claimants as alleged in the Statement of Claim.

Claimant responded to the Counter-Claim as follows: that the arbitration clauses in the contracts do not require that the arbitration award conform to Puerto Rico Law; that Respondents' allegations of defamation are unfounded conclusions; that Claimant never accused Respondents of any illegal behavior, nor harmed their honor or reputation; that Respondents' request for monetary relief is excessive and speculative; that Respondents failed to mitigate their damages; that any damages sustained by Respondents were caused by their own acts and omissions; that Respondents are estopped by their own acts from asserting any claim against Claimant; that the non-solicitation clauses in the contracts are reasonable and comply with the laws of Puerto Rico; that Claimant offered adequate consideration in exchange for the Registered Representatives signing the non-solicitation clause; and, that the Counter-Claim is frivolous.

Respondents alleged the following: that Claimant's allegations fail to state a claim against PaineWebber upon which relief can be granted; that PaineWebber is not, and never has been, the employer of the Registered Representatives; that pursuant to the laws of Puerto Rico, the doctrine of tortious interference cannot be invoked against PaineWebber in light of the factual allegations made in the Statement of Claim; that clients have the absolute right to transfer their accounts from one broker-dealer to another; that the contractual agreement between the Claimant and the Registered Representatives provides that an arbitration award involving the contract must be rendered in accordance with the laws of Puerto Rico; that the non-solicitation covenant is null and void pursuant to the laws of Puerto Rico; that the Claimant has not suffered, and will not suffer, any irreparable harm by the acts imputed to the Respondents; that if Claimant has

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suffered any damages, they were caused by its own acts and omissions; and, that Claimant is estopped by its own acts from asserting any claim against Respondents.

Respondents alleged the following in their Counter-Claim: that the non-solicitation clause in the contract between the Registered Representatives and Claimant is null and void; that after signing the contract the Registered Representatives resigned from Claimant; that Registered Representatives met with some of Claimant's representatives who allowed the Registered Representatives to take copies of documentation regarding annuities clients; that Registered Representatives subsequently began working for PaineWebber Incorporated of Puerto Rico; that some of Registered Representatives' clients transferred their accounts from Claimant to PaineWebber Incorporated of Puerto Rico; and, that Claimant made false allegations in writing against Respondents causing the Respondents to suffer mental anguish.

RELIEF REQUESTED

Claimant requested specific performance of the May 22, 1997 agreements between Claimant and the Registered Representatives, an accounting, dismissal of Respondents' Counter-Claim, compensatory damages in excess of \$50,000.00, costs, and expenses including arbitration fees and attorneys' fees.

Respondents requested a denial of all Claimant's claims, and in their counter-claim, requested mental anguish damages of \$250,000.00 each, reimbursement of all expenses and attorneys' fees, and a declaration that the non-solicitation covenants in the May 22, 1997 agreements are null and void.

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 original remains on file with NASD Regulation, Inc.

The Arbitration Panel denied Claimant's motion for interim injunctive relief, after oral argument, on January 4, 1999.

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:

Claimant's claims are denied, including Claimant's request for attorneys' fees.

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Respondents' counter-claim and all other claims are denied, including Respondents' request for attorneys' fees.

OTHER FEES

Pursuant to Rule 10332 of the Code of Arbitration Procedure ("Code"), Claimant has paid to NASD Regulation, Inc. the claim filing fee of \$500.00.

Pursuant to Rule 10333 of the Code, Claimant has paid to NASD Regulation, Inc. the member surcharge of \$1,000.00.

Pursuant to Rule 10205 of the Code, Claimant shall pay to NASD Regulation, Inc. the interim injunctive surcharge of \$2,500.00 for which NASD Regulation, Inc. shall retain the \$1,500.00 previously deposited by Claimant in partial satisfaction thereof leaving a balance due to NASD Regulation, Inc. of \$1,000.00.

Pursuant to Rule 10333 of the Code, Claimant shall pay to NASD Regulation, Inc. the pre-hearing process fee of \$600.00 previously invoiced.

Pursuant to Rule 10333 of the Code, Claimant shall pay to NASD Regulation, Inc. the hearing process fee of \$2,500.00 previously invoiced.

Pursuant to Rule 10332 of the Code, Respondents have paid to NASD Regulation, Inc. the claim filing fee of \$500.00 for their counter-claim.

Pursuant to Rule 10333 of the Code, Respondents have paid to NASD Regulation, Inc. the member surcharge of \$1,000.00.

Pursuant to Rule 10333 of the Code, Respondents shall pay to NASD Regulation, Inc. the pre-hearing process fee of \$600.00 for which NASD Regulation, Inc. shall retain the \$400.00 previously deposited by Respondents in partial satisfaction thereof leaving a balance due to NASD Regulation, Inc. of \$200.00.

Pursuant to Rule 10333 of the Code, Respondents shall pay to NASD Regulation, Inc. the hearing process fee of \$2,500.00 previously invoiced.

FORUM FEES

Pursuant to Rule 10332 of the Code, the Arbitration Panel has assessed forum fees in the amount of \$6,300.00 (one (1) pre-hearing conference-Chairperson x \$300.00 plus eight (8) hearing sessions-Panel x \$750.00) as follows:

Claimant is assessed the sum of \$3,150.00.

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Respondents are assessed, jointly and severally, the sum of \$3,150.00.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

/s/

Public

Myron S. Dunay, Esq.

/s/

Public

Constant John Poirier, III, Esq.

/s/

Industry

Sydney I. Josepher

Date of Decision: July 12, 1999

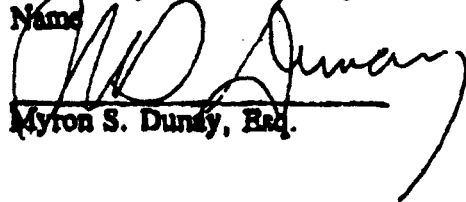
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