

**Award**  
**NASD Regulation, Inc.**

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In the Matter of the Arbitration Between:  
PaineWebber v. Danforth E. Holley

Case Number: 99-148

Hearing Site: Detroit, Michigan

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**REPRESENTATION OF PARTIES**

Claimant PaineWebber, Inc. ("PaineWebber"), hereinafter referred to as "Claimant": Sandra D. Grannum, Esq., PaineWebber, Inc., Weehawken, New Jersey.

Respondent, Danforth E. Holley ("Holley"), hereinafter referred to as "Respondent": David M. Foster, Esq., Farmington Hills, Michigan.

**CASE INFORMATION**

Statement of Claim filed on or about: December 23, 1998

Claimant signed the Uniform Submission Agreement: December 29, 1998

Statement of Answer filed by Respondent on or about: April 30, 1999

Respondent signed the Uniform Submission Agreement: April 30, 1999

Claimant's Motion for Collateral Estoppel filed on or about: February 4, 2000

Respondent's Reply Brief to Motion for Collateral Estoppel filed on or about: February 21, 2000

**CASE SUMMARY**

Claimant asserted the following causes of action: criminal misappropriation of Adelaide Russell's securities account; indemnification; contribution pursuant to Michigan Statutes Annotated ("MSA") @27A.2925(1) and (3), and common law; conversion pursuant to MSA 27A.2920(1) and common law; and unjust enrichment. Claimant alleged Respondent's malfeasance was the sole cause of Ms. Russell's injury, that Claimant made Ms. Russell's estate whole, and Claimant is therefore entitled to receive restitution from Respondent.

Unless specifically admitted in his Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant failed to state a cause of action; Claimant is estopped by their negligence from maintaining this action against Respondent; the Statement of Claim is barred by the applicable statute of limitations; Claimant is not entitled to legal fees as a matter of law because Michigan Courts have ruled that when a party represents itself, no legal fees can be awarded; the Statement of Claim is barred by the doctrine of laches; Claimant is not entitled to pre-judgment interest or costs; Claimant is partially responsible for the losses on the Estate of Adelaide Russell and/on (sic) contributorily negligent.

### **RELIEF REQUESTED**

Claimant requested: money damages of \$457,816, plus interest thereon from September 1998, in addition to all costs, fees, disbursements of this action including attorney's fees and such other equitable relief as the Arbitration Panel may deem just and equitable.

Respondent requested that the Statement of Claim be denied.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The Panel unanimously granted PaineWebber's Motion for Collateral Estoppel.

### **AWARD**

After considering the pleadings, the testimony and evidence presented during the pre-hearing oral arguments, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Respondent is liable for and shall pay to Claimant PaineWebber, Inc., the sum of \$457,816.00 in compensatory damages;
- 2.) That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 3.) That any relief not specifically enumerated, including interest and attorney's fees is hereby denied with prejudice.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 500.00
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#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00

#### **Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with

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these proceedings are:

One (1) Pre-hearing session with a single arbitrator x \$300.00	= \$ 300.00
Pre-hearing conference: January 27, 2000 1 session	
Two (2) Pre-hearing sessions with Panel x \$750.00	= \$1,500.00
Pre-hearing conferences: December 2, 1999 1 session	
March 10, 2000 1 session	
Total Forum Fees	= \$1,800.00

The Panel has assessed \$1,800.00 of the forum fees to Claimant PaineWebber.

**Fee Summary**

Claimant, PaineWebber, be and hereby is solely liable for:

Initial Filing Fee	= \$ 500.00
Member Fees	= \$ 2,100.00
Forum Fees	= \$ 1,800.00
Total Fees	= \$ 4,400.00
Less payments	= \$ 3,350.00
Balance Due NASD Regulation, Inc.	= \$ 1,050.00

Respondent, Danforth E. Holley, be and hereby is solely liable for:

Total Fees	= \$ 0.00
Less payments	= \$ 0.00
Balance Due NASD Regulation, Inc.	= \$ 0.00

All balances are due to NASD Regulation, Inc.

**Concurring Arbitrators' Signatures**



Dennis J. Levasseur, Esq.  
Industry Arbitrator, Presiding Chair

3/28/2000

Signature Date

Richard M. Pauly  
Industry Arbitrator

Signature Date

Jane E. Bergman  
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

NASD Regulation, Inc. Office of Dispute Resolution  
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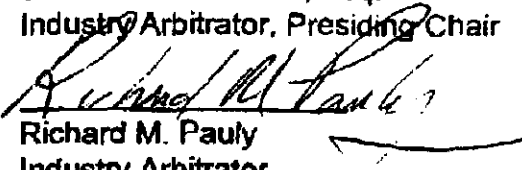
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