

**AWARD**  
**NASD Regulation, Inc.**

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In the Matter of the Arbitration Between

Name of Claimant

PaineWebber, Inc.

and

99-00521  
Denver, Colorado

Name of Respondent

Donald J. LoCoco

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**REPRESENTATION OF PARTIES**

PaineWebber, Inc. ("**Claimant**") was represented by Romaine L. Gardner, Esq., Staten Island, New York.

Donald J. LoCoco ("**Respondent**") was represented by Martin M. Berliner, Esq., Berliner Zisser Walter & Gallegos, Denver, Colorado.

**CASE INFORMATION**

The Statement of Claim was filed on or about February 5, 1999. Submission Agreement of Claimant PaineWebber, Inc. was signed on February 4, 1999 by Andrew J. Melnick.

Statement of Answer was filed by Respondent Donald J. LoCoco on or about April 15, 1999. Submission Agreement of Respondent Donald J. LoCoco was signed on March 11, 1999.

**CASE SUMMARY**

Claimant alleged that it had made certain loans to the Respondent which were evidenced by promissory notes and that the Respondent has failed to repay those notes pursuant to their terms. The agreement between the parties specified that the notes would become due and payable, under certain circumstances as set forth in the Notes, upon the termination of the Respondent.

Respondent admitted signing the Promissory Notes at issue in this matter. Respondent stated that his termination from PaineWebber, Inc. was not the result of any impropriety, violation of firm policy or violation of a statute, rule or regulation applicable to him as an associated person or employee of PaineWebber, Inc. It was also stated that the claimed amounts should be forgiven or forfeited because he was terminated by PaineWebber, Inc. other than for cause, and PaineWebber, Inc. is therefore, foreclosed from collecting on the Notes.

### **RELIEF REQUESTED**

Claimant requested entry of an award in its favor against Respondent as follows:

- a. money damages in the amount of \$97,185.86 plus \$14,385.23 in interest thereon as of February 3, 1999, with said interest accruing each day;
- b. all costs, fees and disbursements of this action, including attorneys' fees; and
- c. such other and further relief as the Arbitration panel may deem just and equitable.

Respondent respectfully requested an award in his favor on the claims asserted by PaineWebber, Inc. in its Statement of Claim against him, that PaineWebber, Inc. be awarded nothing, and for such other relief as the Arbitration Panel may deem warranted.

### **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(s) remain on file with the NASD Regulation, Inc. Office of Dispute Resolution (the "NASD").

### **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 Donald J. LoCoco shall be and hereby is liable for and shall pay to PaineWebber, Inc. the sum of \$54,117.33 (**Fifty Four Thousand One Hundred Seventeen Dollars and Thirty Three Cents**).
2. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
3. Other than the Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

### **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

**Member Fees**

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

Member surcharge = \$1,000.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$2,500.00

**Adjournment Fees**

No Adjournments were granted during these proceedings. PaineWebber, Inc. had requested an adjournment of the hearing dates.

**Forum Fees and Assessments**

The Arbitration 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. Forum Fees associated with these proceedings are:

One (1) Pre-hearing session(s) with Panel x \$600.00 = \$ 600.00

Pre-hearing conference(s): August 9, 1999 1 session

Five (5) Hearing sessions x \$600.00 = \$3,000.00

Hearing Date(s): January 26, 2000 2 sessions

January 27, 2000 2 sessions

January 28, 2000 1 session

Total Forum Fees = \$3,600.00

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

The Arbitration Panel has assessed \$1,800.00 of the forum fees to Donald J. LoCoco.

**Fee Summary**

Claimant, PaineWebber, Inc., shall be and hereby is liable for:

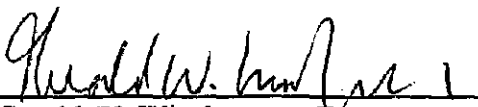
Initial Filing Fee	= \$ 500.00
Member Fees	= \$4,100.00
<u>Forum Fees</u>	<u>= \$1,800.00</u>
Total Fees	= \$6,400.00
<u>Less payments</u>	<u>= \$5,800.00</u>
Balance Due NASD Regulation, Inc.	= \$ 600.00

Respondent, Donald J. LoCoco, shall be and hereby is liable for:

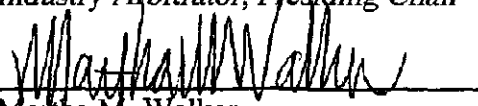
<u>Forum Fees</u>	<u>= \$1,800.00</u>
Total Fees	= \$1,800.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Regulation, Inc.	= \$1,800.00

All balances are due to NASD Regulation, Inc.

Dated:

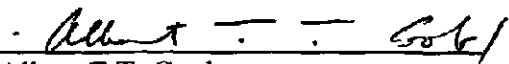
  
Gerald W. Wischmeyer, Esq.  
Industry Arbitrator, Presiding Chair

January 28, 2000

  
Martha M. Walker  
Industry Arbitrator

January 28, 2000

Dissenting from the majority decision awarding \$54,117.33 in damages and concurring in all other aspects of this Award. An award of \$81,176.00 would have been appropriate.

  
Albert T.T. Cook  
Industry Arbitrator

January 28, 2000