

**Stipulated Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

Leon Friedman and Jeanette Friedman, (Claimants) vs. PaineWebber Incorporated and Robert Child, (Respondents)

Case Number: 00-00501

Hearing Site: Albany, New York

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**REPRESENTATION OF PARTIES**

Claimants, Leon Friedman and Jeanette Friedman, hereinafter collectively referred to as "Claimants": Ronald S. Kossar, Esq., a sole practitioner, Middletown, NY.

Respondent, PaineWebber Incorporated ("PaineWebber"): Andrew J. Melnick, Esq., Corporate Vice President and Associate General Counsel, PaineWebber Incorporated, Weehawken, NJ.

Respondent, Robert Child ("Child"): Joel E. Davidson, Esq., Law Offices of Joel E. Davidson, Park Ridge, NJ.

**CASE INFORMATION**

Statement of Claim filed on or about: January 31, 2000.

Amended Statement of Claim filed on or about: May 9, 2000.

Second Amended Statement of Claim filed on or about: April 5, 2001.

Claimants signed the Uniform Submission Agreement: December 28, 1999.

Joint Statement of Answer filed by PaineWebber and Child on or about: April 6, 2000.

Joint Response to Amended Statement of Claim filed by PaineWebber and Child on or about: June 16, 2000.

PaineWebber signed the Uniform Submission Agreement: April 5, 2000.

Child signed the Uniform Submission Agreement: April 5, 2000.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary duty; fraud and misrepresentation; violation of NASD 401 and 405 "Know Your Customer Rules" and NASD Rules of Fair Practice, Article III, Section 2-"Recommendations To Customers"; violation of Section 12 of the Securities Exchange Act of 1933; violation of NASD Rules of Fair Practice, Section 27-"Supervision"; breach of the implied covenant of good faith and fair dealing; wrongful conversion; and violation of the Racketeer Influenced and Corrupt

Organization Act ("RICO"). Claimants' claim involved the bonds of Pioneer Fin. Corp., "Edinburg", "Stuart", and Worth Nursing Home.

Unless specifically admitted in their Answer, PaineWebber and Child denied the allegations made in the Statement of Claim and asserted the following defenses: each count of the Statement of Claim fails to state a claim upon which relief may be granted; Claimants' causes of action are barred by the doctrines of ratification, waiver, and estoppel; Claimants cannot demonstrate that PaineWebber or Child acted with the requisite scienter; Claimants' claims are time-barred, in whole or in part, by the applicable statute of limitations; Claimants and/or those acting on their behalf expressly and implicitly represented that they understood the nature and risks of the high yield bonds they purchased; because Claimants' accounts were non-discretionary, PaineWebber and/or Child did not violate any fiduciary duty to Claimants; there is no independent cause of action for violation of NYSE or NASD rules; the transactions complained of in the Statement of Claim were duly authorized by Claimants who, at all times, were in sole control of the assets in their accounts; PaineWebber and its officers, agents, and employees, in discharging their duties, acted in good faith and exercised the degree of care, diligence, and skill which a prudent person would exercise in similar circumstances and like positions; the evidence will demonstrate that PaineWebber properly supervised Claimants' accounts; Claimants had the opportunity and means to mitigate damages to their account but failed to do so in an appropriate and reasonable manner; Claimants' alleged losses were not proximately caused by any alleged misconduct of PaineWebber or Child; Claimants' damages cannot be attributed to any statements made by PaineWebber or Child, but are due instead to extraneous market conditions over which PaineWebber and/or Child have no control; and Claimants' RICO claim fails to state a claim upon which relief may be granted.

#### **RELIEF REQUESTED**

Claimants requested:

1. Compensatory damages in the approximate amount of \$315,000.00;
2. Pre-award and post-award interest from the date of the alleged violations as allowed by law;
3. Treble damages under Federal and State RICO Acts;
4. Punitive damages in the amount of \$5,000,000.00; and
5. Legal and/or consulting fees (including expert fees) plus the costs of filing and administrative fees incurred in this arbitration.

PaineWebber and Child requested dismissal of this proceeding; expungement of the claim from Child's record; an Award in their favor of the costs and disbursements of this proceeding; and such other and further relief as is just.

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

By letter dated May 11, 2001, Claimants' counsel advised NASD Dispute Resolution, Inc. that the parties have settled this matter, and requested that the Stipulated Award attached hereto as Exhibit "A" be forwarded to the Panel for review and signature.

Upon confirmation of the attached Stipulated Award by a court of competent jurisdiction, NASD Regulation, Inc. shall comply with the terms of said Stipulated Award.

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.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$ 600.00
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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, PaineWebber Incorporated is a party.

Member surcharge	= \$3,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$5,000.00

#### **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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel x \$1,200.00	= \$2,400.00
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Pre-hearing conferences:	August 22, 2000	1 session
	January 23, 2001	1 session

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Total Forum Fees	= \$2,400.00
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1. The Panel has assessed \$1,200.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$1,200.00 of the forum fees jointly and severally against PaineWebber and Child.

**Fee Summary**

1. Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 600.00
<u>Forum Fees</u>	= <u>\$1,200.00</u>
Total Fees	= \$1,800.00
<u>Less payments</u>	= <u>\$1,800.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

2. PaineWebber be and hereby is solely liable for:

<u>Member Fees</u>	= <u>\$8,600.00</u>
Total Fees	= \$8,600.00
<u>Less payments</u>	= <u>\$8,600.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

3. PaineWebber and Child be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= <u>\$1,200.00</u>
Total Fees	= \$1,200.00
<u>Less payments</u>	= <u>\$ 0.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1,200.00

All balances are due and payable to NASD Dispute Resolution, Inc.

## EXHIBIT A

### CASE INFORMATION

Statement of Claim filed: February 11, 2000

Claimants' Submission Agreement signed on: February 11, 2000

Joint Statement of Answer filed by Respondents on: April 13, 2000

### CASE SUMMARY

Claimants alleged losses in their PWI accounts arising from Respondents' alleged misrepresentation, recommendations of unsuitable securities, breach of fiduciary duty, churning, fraud, failure to exercise due diligence, negligent supervision, as well as, violations of federal and Florida securities laws, and requested an award of damages plus interest and attorneys' fees.

Respondents denied any allegation of wrongdoing.

### OTHER ISSUES CONSIDERED AND DECIDED

The counsel for 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 National Association of Securities Dealers Regulation, Inc.

A Stipulation to Dismiss and Expunge the Registered Representative's Record was filed with the National Association of Securities Dealers Regulation, Inc.

### AWARD

After considering the parties' submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

Claimants' withdrawal of their claims is accepted and Respondents are dismissed from this matter with prejudice.

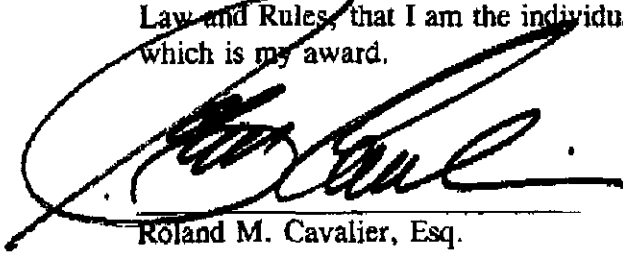
All references to this arbitration proceeding shall be expunged from the CRD record of Respondent Robert Child.

**ARBITRATION PANEL**

Roland M. Cavalier, Esq.	-	Public Arbitrator, Presiding Chair
James E. Kleinbaum, Esq.	-	Public Arbitrator
Jacqueline W. Marshall	-	Industry Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, 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.



Roland M. Cavalier, Esq.  
Public Arbitrator, Presiding Chair

6/12/01  
Signature Date

James E. Kleinbaum, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

Jacqueline W. Marshall  
Industry Arbitrator

\_\_\_\_\_  
Signature Date

June 15, 2001  
Date of Service (For NASD office use only)

NASD Dispute Resolution, Inc.  
Arbitration No. 00-00501  
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**ARBITRATION PANEL**


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Jacqueline W. Marshall	-	Industry Arbitrator

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\_\_\_\_\_  
Roland M. Cavalier, Esq.  
Public Arbitrator, Presiding Chair

\_\_\_\_\_  
Signature Date

  
\_\_\_\_\_  
James E. Kleinbaum, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

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Jacqueline W. Marshall  
Industry Arbitrator

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Roland M. Cavalier, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

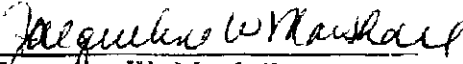
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James E. Kleinbaum, Esq.  
Public Arbitrator

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Signature Date

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Jacqueline W. Marshall  
Industry Arbitrator

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Signature Date

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June 15, 2001  
Date of Service (For NASD office use only)