

AWARD

~~brett_olander_glm1@statefarm.com~~ **NASD Dispute Resolution, Inc.**

In the Matter of the Arbitration Between

Name of Claimant

Gary Growden

and

Name of Respondents

PaineWebber Incorporated
Edward Papic
Wilder D. Carnes

00-03914
Minneapolis, Minnesota

REPRESENTATION OF PARTIES

Gary Growden ("Claimant") was represented by Delmer C. Gowing, III, Esq., Delray Beach, Florida.

PaineWebber Incorporated ("Respondent PaineWebber") was represented by Donald S. Davidson, Esq., Senior Vice President & Senior Associate General Counsel, UBS PaineWebber Inc., Weehawken, New Jersey.

Edward Papic ("Respondent Papic") and Wilder D. Carnes ("Respondent Carnes") were represented by Bradley J. Butwin, Esq., and Paul R. Niehaus, Esq., O'Sullivan LLP, New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about September 7, 2000. Respondents PaineWebber, Papic and Carnes filed Statement of Answer and Counterclaim on or about December 6, 2000. Claimant's Response to Counterclaim was filed on or about May 2, 2001.

Submission Agreement of Claimant was signed on August 16, 2000. Donald S. Davidson signed Submission Agreement of Respondent PaineWebber on November 7, 2000. Submission Agreement of Respondent Papic was signed on November 7, 2000. Submission Agreement of Respondent Carnes was signed on November 7, 2000.

CASE SUMMARY

Claimant asserted a claim for alleged negligent misrepresentation and recommendations by Respondent PaineWebber through its brokers, Respondents Papic and Carnes. The claim related to Claimant's investment under the name "Assets International" of \$2.5 million in Advance Local

Development ("ALD") for one day "Table Top" trade of prime bank debentures guaranteed by Chase Bank.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated the following:

Respondents Papic and Carnes, two PaineWebber financial advisors, were introduced to Claimant in January 2000. Although Respondents [Papic and Carnes'] job function was to trade publicly-traded securities on behalf of their clients, Claimant began sending [said] Respondents proposed business plans, "venture capital deals" and "investment opportunities" for PaineWebber. Claimant also began pressing Respondents [Papic and Carnes] for advice as to whether he could borrow against some foreign certificates of deposit that he said was "leasing." [Respondent] Papic told Claimant that he could not advise him regarding the CD's but said that he had mentioned them to a principal of one of his PaineWebber clients (a Mr. Odom of ALD), who had expressed the view that the CD's sounded like a bad investment. Claimant then requested Odom's phone number, and, after first checking with Odom, [Respondent] Papic supplied it. Respondents had (and have) no knowledge of any transaction between Claimant and Odom or ALD and had no involvement in any such deal. Indeed, it was not until approximately three months after his discussion with [Respondent] Papic—when Claimant made a demand on PaineWebber for payment—that Claimant even disclosed to Respondents that he had entered into some transaction with ALD.

Respondents also asserted these affirmative defenses: failure to state a claim upon which relief can be granted; failure to join necessary and indispensable parties; assumption of risk/lack of causation; unclean hands; usury laws as barring relief; and lack of damages. In addition, Respondents asserted a counterclaim for its attorneys' fees and costs for defending an alleged frivolous claim.

RELIEF REQUESTED

Claimant requested an award in the amount of \$2,500,000 as return of principal and payment of profits of \$16,875,000 plus costs, interest and attorneys' fees.

Respondents requested that the claims asserted in this matter be dismissed with prejudice and that Respondents should be granted their attorneys' fees, costs and such other relief as the Panel deems just and proper.

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 Dispute Resolution, Inc. (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. Claimant has standing to assert a claim against Respondents for all of the funds he invested under the name "Asset International" in ALD regardless of the source of those funds.
2. Respondents did not make any misrepresentations of material fact to Claimant.
3. Claimant did not reasonably rely upon any representations by Respondents in deciding to make the investment in ALD.
4. Any representations to Claimant by Respondents were not the proximate cause of any damage suffered by Claimant with respect to ALD.
5. Claimant's claim was not warranted by existing law or a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law, and Claimant's allegations did not have evidentiary support.
6. Claimant's claim is dismissed with prejudice.
7. Respondents' counterclaim is granted.
8. Claimant shall pay \$20,000 to Respondents as partial reimbursement of their attorneys' fees.
9. 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.
10. Other than the award of attorneys' fees just noted and the Forum 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 Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	\$600.00
Counter 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 Incorporated.

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

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. Fees associated with these proceedings are:

One (1) Pre-hearing session(s) with a single arbitrator x \$450.00	\$ 450.00
Pre-hearing conference(s): July 17, 2001 1 session	
One (1) Pre-hearing session(s) with Panel x \$1,200.00	\$1,200.00
Pre-hearing conference(s): May 24, 2001 1 session	
Eight (8) Hearing sessions x \$1,200.00	\$9,600.00
Hearing Date(s): July 23, 2001 2 sessions	
July 24, 2001 2 session	
July 25, 2001 2 sessions	
July 26, 2001 2 sessions	
Total Forum Fees	\$11,250.00

The Arbitration Panel has assessed \$11,250 of the forum fees to Claimant.

Fee Summary

Claimant, Gary Growden, shall be and hereby is liable for:

Initial Filing Fee	\$ 300.00
<u>Forum Fees</u>	<u>\$11,250.00</u>
Total Fees	\$11,550.00
<u>Less payments</u>	<u>(\$1,800.00)</u>
Balance Due NASD Dispute Resolution, Inc.	\$9,750.00

Respondent, PaineWebber Incorporated, shall be and hereby is liable for:

Counterclaim Filing Fee	\$ 500.00
Member Fees	\$9,200.00
<u>Forum Fees</u>	<u>\$ 0.00</u>
Total Fees	\$ 9,700.00
<u>Less payments</u>	<u>\$7,100.00</u>
Balance Due NASD Dispute Resolution, Inc.	\$ 2,600.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Duane W. Krohnke – Public Arbitrator, Presiding Chair
Brett W. Olander- Public Arbitrator
Kenneth O. Fossey- Non-Public Arbitrator

Concurring Arbitrators:

/s/ Duane W. Krohnke
Duane W. Krohnke
Public Arbitrator, Presiding Chair

August 1, 2001
Signature Date

/s/ Brett W. Olander
Brett W. Olander
Public Arbitrator

August 1, 2001
Signature Date

/s/ Kenneth O. Fossey
Kenneth O. Fossey
Non-Public Arbitrator

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NASD Dispute Resolution, Inc.

Arbitration No. 00-03914

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Kenneth O. Fossey- Non-Public Arbitrator

Concurring Arbitrators:



Duane W. Krohnke

Public Arbitrator, Presiding Chair



Signature Date

Brett W. Olander

Public Arbitrator

Signature Date

Kenneth O. Fossey

Non-Public Arbitrator

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NASD Dispute Resolution, Inc.
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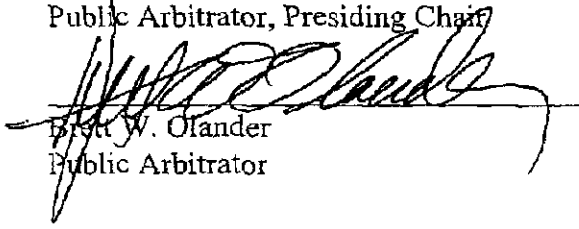
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Concurring Arbitrators:

Duane W. Krohnke
Public Arbitrator, Presiding Chair

Signature Date


Brett W. Olander
Public Arbitrator

8-1-01
Signature Date

Kenneth O. Fossey
Non-Public Arbitrator

Signature Date

8/1/01
Signature Date

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