

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Strother Investment Co., Inc., Strother Film Partners II, a California Limited Partnership, Richard Strother, individually, Richard Strother as Custodian for Troy Strother, and Richard Strother as Custodian for Erica Strother, (Claimants) vs. PaineWebber, Inc., (Respondent)

Case Number: 00-04883

Hearing Site: Boston, Massachusetts

REPRESENTATION OF PARTIES

Claimants, Strother Investment Co., Inc. ("SIC"), Strother Film Partners II, a California Limited Partnership ("SFP"), Richard Strother, individually ("R. Strother"), Richard Strother as Custodian for Troy Strother ("T. Strother Custodial"), and Richard Strother as Custodian for Erica Strother ("E. Strother Custodial"), hereinafter collectively referred to as "Claimants", appeared *pro se*.

Respondent, PaineWebber, Inc., hereinafter referred to as "Respondent": Loren Schecter, Esq., and Christopher Lewis, Esq, Kirkpatrick & Lockhart LLP, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: November 2, 2000.

SIC signed the Uniform Submission Agreement: November 2, 2000.

SFP signed the Uniform Submission Agreement: November 2, 2000.

R. Strother signed the Uniform Submission Agreement: November 2, 2000.

T. Strother Custodial signed the Uniform Submission Agreement: November 2, 2000.

E. Strother Custodial signed the Uniform Submission Agreement: November 2, 2000.

Statement of Answer filed by Respondent on or about: January 31, 2001.

Respondent signed the Uniform Submission Agreement: January 31, 2001.

CASE SUMMARY

Claimants asserted the following causes of action: breach of contract; conversion of customer's assets; breach of fiduciary duty; unauthorized disclosure of customer account information; tortious interference with Claimants' business and affairs; refusal to allow customer access to funds; refusal to journal and transfer customers' assets; refusal to obey

customer purchase and sell instructions; refusal to provide customer records; unauthorized sale of securities; and violation of commercial honor and trust and the equitable principles of fair play.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: any loss in value in Claimants' accounts stems solely from the market decisions of those who had investment power over those accounts not to liquidate the securities in question; there is no assertion that either T. Strother or E. Strother remain minors or that R. Strother has any continuing right to act for them; Respondent followed the instructions to liquidate the account in question which were voluntarily given by the person holding the power of attorney over the account; Respondent never converted any of the accounts of Claimants, never asserted control over any of the accounts, or in any way utilized any such account for its own benefit; Respondent properly retained funds in accounts when they were restrained pursuant to valid court orders; and all claims for punitive damages in this matter are without merit as no punitive damages can lie for any alleged breach of contract.

RELIEF REQUESTED

Claimants requested:

- a. \$965,562.00 in loss in value of securities in SIC's account improperly restrained and converted by Respondent;
- b. \$90,000.00 in loss in value of securities in the accounts of R. Strother, T. Strother Custodial, and E. Strother Custodial improperly restrained and converted by Respondent;
- c. \$1,300,000.00 as economic loss resulting from a litigation settlement in December 1994, which settlement was forced by the inability of SIC to access funds in Claimants' accounts that were wrongfully restrained and converted by Respondent;
- d. \$1,200,000.00 consisting of \$800,000.00 from revenues from ITC (syndicated television) earned on account of the film "The Big Easy", and approximately \$400,000.00 in interest from 1991 lost to Claimants resulting from the inability of SIC to access funds in Claimants' accounts that were wrongfully restrained and converted by Respondent;
- e. \$3,240,472.00 in lost economic opportunity in SIC's account;

- f. \$48,527,177.39 claimed on account of lost economic opportunity to SIC resulting from the inability of SIC to access funds in Claimants' accounts that were wrongfully restrained and converted by Respondent;
- g. Interest;
- h. Punitive damages in the amount of \$50,000,000.00; and
- i. Costs of this claim, including forum fees, attorneys' fees, witness and production fees, and other case-related costs.

Respondent requested that Claimants's claims be dismissed and that all relief be denied to Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent made various motions to dismiss during the hearing. All were denied except the following: (a) The Panel granted Respondent's application to dismiss any causes of action arising prior to November 1994, and (b) the Panel granted Respondent's application to dismiss the claims asserted by SFP.

The panel granted Claimants' application to present by telephone the testimony of various witnesses.

Following the conclusion of the hearings in this matter, each of the parties affirmatively stated that the party had a full and fair opportunity to be heard.

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.

AWARD

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

1. Claimants' claims are hereby dismissed in their entirety.
2. All other requests for relief are hereby denied.

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

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, Inc. is a party.

Member surcharge = \$ 3,600.00

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 a single arbitrator x \$450.00 = \$ 900.00

Pre-hearing conferences: July 31, 2001 1 session
September 18, 2001 1 session

One (1) Pre-hearing session with Panel x \$1,200.00 = \$ 1,200.00

Pre-hearing conference: April 27, 2001 1 session

Nine (9) Hearing sessions x \$1,200.00 = \$10,800.00

Hearing Dates: August 7, 2001 2 sessions
August 8, 2001 2 sessions
August 9, 2001 2 sessions
October 4, 2001 1 session
October 5, 2001 2 sessions

Total Forum Fees = \$12,900.00

1. The Panel has assessed \$6,450.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$6,450.00 of the forum fees against Respondent.

Fee Summary

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

| | |
|---|----------------------|
| Initial Filing Fee | = \$ 600.00 |
| <u>Forum Fees</u> | <u>= \$ 6,450.00</u> |
| Total Fees | = \$ 7,050.00 |
| <u>Less payments</u> | <u>= \$ 1,881.18</u> |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 5,168.82 |

2. Respondent be and hereby is solely liable for:


| | |
|---|----------------------|
| Member Fees | = \$ 9,200.00 |
| <u>Forum Fees</u> | <u>= \$ 6,450.00</u> |
| Total Fees | = \$15,650.00 |
| <u>Less payments</u> | <u>= \$ 4,200.00</u> |
| Balance Due NASD Dispute Resolution, Inc. | = \$11,450.00 |

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

ARBITRATION PANEL

| | | |
|-----------------------|---|------------------------------------|
| Robert Pincus, Esq. | - | Public Arbitrator, Presiding Chair |
| B. John Dill | - | Public Arbitrator |
| Joseph F. Meldon, Jr. | - | Industry Arbitrator |

Concurring Arbitrators' Signatures



Robert Pincus, Esq.
Public Arbitrator, Presiding Chair

Signature Date

B. John Dill
Public Arbitrator

Signature Date

Joseph F. Meldon, Jr.
Industry Arbitrator

Signature Date

November 9, 2001
Date of Service (For NASD office use only)

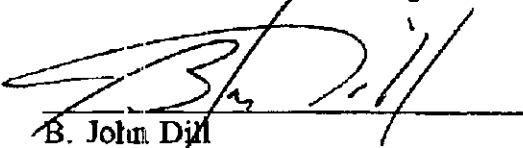
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| Joseph F. Meldon, Jr. | - | Industry Arbitrator |

Concurring Arbitrators' Signatures

Robert Pincus, Esq.
Public Arbitrator, Presiding Chair

Signature Date


B. John Dill
Public Arbitrator

11.08.01
Signature Date

Joseph F. Meldon, Jr.
Industry Arbitrator

Signature Date

November 9, 2001
Date of Service (For NASD office use only)

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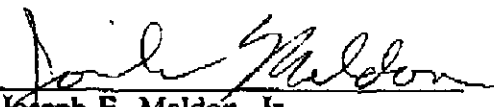
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Robert Pincus, Esq.
Public Arbitrator, Presiding Chair

Signature Date

B. John Dill
Public Arbitrator

Signature Date


Joseph F. Meldon, Jr.
Industry Arbitrator

11/9/01
Signature Date

November 9, 2001

Date of Service (For NASD office use only)