

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of Claimant

Case Number: 01-01115

Anita and Leonard Falk

Name of Respondent

PaineWebber, Inc.
Michael Sandberg

Hearing Site: Boca Raton, Florida

REPRESENTATION OF PARTIES

For Anita and Leonard Falk, hereinafter also referred to as "Claimants": Albert A. Rapoport, Esq., Boca Raton, Florida.

For PaineWebber, Inc. ("PaineWebber") and Michael Sandberg ("Sandberg"), hereinafter also referred to as Respondents: Patricia E. Cowart, Esq., PaineWebber, Fort Lauderdale, Florida.

CASE INFORMATION

Statement of Claim filed on or about: May 2, 2001.

Claimants signed the Uniform Submission Agreement on: February 9, 2001.

Joint Statement of Answer filed by Respondents on or about: May 24, 2001.

Respondent PaineWebber's Uniform Submission Agreement signed on: June 4, 2001, by Patricia E. Cowart, Esq., on behalf of the firm.

Respondent Sandberg signed the Uniform Submission Agreement on: June 12, 2001.

CASE SUMMARY

Claimants alleged the following causes of action: unsuitability; breach of fiduciary duty; and, negligence. The causes of action relate to the purchase of bond funds and variable annuities in Claimants' account at PaineWebber.

Unless specifically admitted in the Joint Statement of Answer, Respondents denied the allegations of wrongdoing contained in the Statement of Claim and asserted the following affirmative defenses: the Statement of Claim fails to state a claim upon which relief can be granted; the Statement of Claim is barred by the applicable statutes of limitations; Claimants

have failed to state any causes of action to support their claim for damages and especially their claim for attorney's fees; Claimants failed to exercise reasonable care and diligence to minimize and mitigate any alleged damages and are therefore, precluded from recovery; and, Claimants received a prospectus for each of the investments at issue, were aware of the risks associated with said investments, voluntarily chose to assume those risks and are therefore barred and estopped from recovery.

RELIEF REQUESTED

Claimants requested the following: compensatory damages in the amount of \$125,000.00, plus interest at the legal rate from the date of purchase; attorneys' fees; all other costs incurred in this matter; and, such other relief deemed just and proper by the Panel.

Respondents requested a dismissal of Claimants' Statement of Claim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

The parties 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 the evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent PaineWebber is found liable on the claims of unsuitability and negligence and shall pay to Claimants the sum of \$2,000.00, plus post-judgment interest at the rate of 9% per annum, from the date of the Award to the date of payment of the Award.
- 2) Respondent Sandberg is found not liable and, therefore, all claims against him are denied.
- 3) The parties shall bear their respective costs, including attorney's fees.
- 4) All other requests for relief not specifically addressed herein are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

Filing Fees

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

Initial claim filing fee = \$ 300.00

Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events which gave rise to the dispute, claim, or controversy. Accordingly, the member firm PaineWebber is a party and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	<u>= \$ 2,500.00</u>
Total Member Fees	= \$ 4,600.00

Adjournment Fees

The following adjournment fees are assessed:

No adjournments were requested during these proceedings.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

No injunctive relief fees were incurred during these proceedings.

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

One (1) Pre-hearing session with the Panel @ \$1,125.00		= \$ 1,125.00
Pre-hearing conference date: September 28, 2001	1 session	
Four (4) Hearing sessions @ \$1,125.00		= \$ 4,500.00
Hearing dates: June 3, 2001	2 sessions	
June 4, 2001	2 sessions	
Total Forum Fees		= \$ 5,625.00

1. The Panel assessed \$ 2,812.50 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$2,812.50 of the forum fees to Respondent PaineWebber.

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/s/
Sydney I. Josepher
Industry/Non-Public Arbitrator

Signature Date

Dissenting Arbitrator's Signature

/s/
Seth L. Finkel, Esq.
Chair, Public Arbitrator

Signature Date

Arbitrator Seth L. Finkel, Esq. dissents as to paragraph one (1) of the Award with respect to liability and damages.

July 8, 2002
Date of Decision: (For NASD office use only)

Administrative Costs

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

No administrative costs were incurred during these proceedings.

Fee Summary

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$2,812.50</u>
Total Fees	= \$3,112.50
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1,687.50

Respondent PaineWebber is solely liable for:

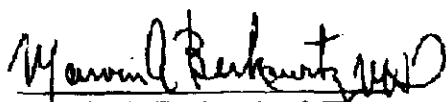
Member Fees	= \$ 4,600.00
<u>Forum Fees</u>	<u>= \$ 2,812.50</u>
Total Fees	= \$ 7,412.50
<u>Less payments</u>	<u>= \$ 6,175.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,237.50

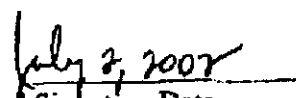
All balances are payable to the NASD and are due upon the receipt of the Award by the parties pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

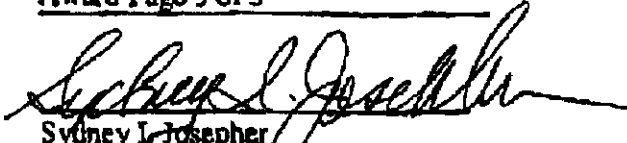
Seth L. Finkel, Esq.	Public/Presiding Chair
Marvin A. Berkowitz, MD	Public/Panelist
Sydney I. Josepher	Non-Public/Panelist

Concurring Arbitrators' Signatures


Marvin A. Berkowitz, MD
Public Arbitrator


Signature Date

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Sydney L. Josepher
Industry/Non-Public Arbitrator

7.2.02
Signature Date

Dissenting Arbitrator's Signature

Seth L. Finkel, Esq.
Chair, Public Arbitrator

Signature Date

Arbitrator Seth L. Finkel, Esq. dissents as to paragraph one (1) of the Award with respect to liability but otherwise concurs in the decision

Date of Decision: (For NASD office use only)

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Sydney I. Josepher
Industry/Non-Public Arbitrator

Signature Date

Dissenting Arbitrator's Signature



Seth L. Finkel, Esq.
Chair, Public Arbitrator

7/2/02
Signature Date

Arbitrator Seth L. Finkel, Esq. dissents as to paragraph one (1) of the Award with respect to liability and Damages

Date of Decision: (For NASD office use only)