

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Jack and Marsha Cox

Claimant

vs.

PaineWebber, Inc.,
Robert Fournier,
Robert Dyer

Respondents

CASE NO. 87-01698

SUMMARY OF ISSUES

This case was filed with the NASD on September 9, 1987. Claimants alleged violation of federal securities laws, federal anti-racketeering law, state securities fraud, common law fraud, negligence, breach of oral contract, breach of fiduciary duty and negligent misrepresentation. Claimants alleged that they instructed Respondents to invest Claimants' money conservatively and in stocks which could be liquidated at fair market value within one week, and that Respondents disobeyed Claimants' express instructions by recommending and encouraging Claimants' purchases of shares in First Commercial Bank, a highly speculative stock. Respondents denied the allegations of Claimants. Respondents alleged that Claimants like to purchase bank stocks, that it was Mr. Cox who decided to increase his holdings in First Commercial Bank, that Mr. Cox relied on publicly available information and PaineWebber's role as a market maker was fully disclosed. Respondents alleged the claim failed to state a claim, is barred by the statute of frauds and the doctrines of waiver, estoppel and ratification, that Respondents acted in good faith and did not directly or indirectly induce the acts allegedly constituting the claimed violations of law, that there is no basis for an award of punitive damages, that the Claimants failed to mitigate their alleged losses, and that the Claimants alleged losses are attributable to their own investment decisions.

DAMAGES AND RELIEF REQUESTED

Claimant requested damages in the amount of the investment in First Commercial Bank stock, minus actual value received (approximately \$126,000), or according to proof, that these damages be trebled, costs, including attorneys' fees, punitive damages of \$25,000,000, and such other and further relief as deemed proper. Respondents requested that the arbitrators render an award dismissing the Statement of Claim and assessing costs against the Claimants.

DAMAGES AND RELIEF AWARDED

On September 13 and 14, 1989 the undersigned arbitrators heard the controversy in five sessions; between the parties as set forth in submissions to arbitration signed by Claimant January 26, 1988, by Respondent PaineWebber on March 11, 1988, by Respondent Robert Fournier on March 18, 1988, and by Respondent Robert Dyer on March 11, 1988. The arbitration panel, having considered the pleadings, the testimony, the evidence presented at the hearing and the post-hearing submissions, has determined in full and final resolution of the issues submitted for determination as follows:

1. The arbitrators find unanimously in favor of the Respondents on each and every claim alleged.

2. Respondents claim for reimbursement of costs incurred is denied.

3. The parties shall each bear their respective costs including attorney's fees.

4. Pursuant to Section 43 of the National Association of Securities Dealers, Inc. (NASD) Code of Arbitration Procedure:

a. The NASD shall retain the \$500.00 filing fee previously deposited by the Claimant.

b. Furthermore, PaineWebber, Inc., is hereby assessed the sum of \$500.00 representing forum fees to be paid to the NASD directly.

OTHER ISSUES

This case was originally filed in the United States District Court Eastern District of California; upon the stipulation entered into by the parties and filed with the Court on September 4, 1987, this matter was remanded to arbitration with the NASD and all proceedings were stayed pending completion of the arbitration.

Upon request of the arbitration panel, the parties filed Post-Hearing Supplemental Briefs on September 28, 1989. The arbitrators reconvened for final deliberations on September 28, 1989.

The parties stipulated to execution and service of this award in counterpart copies.

ARBITRATORS CONCURRING

Arthur A. Groza

Angie Lane
Angie Lane

DATE SERVED: December 4, 1989

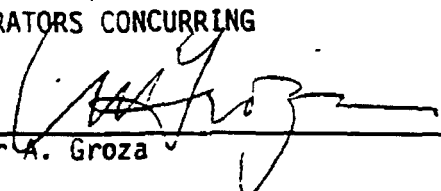
Marcus E. Gracia

Perry L. Ecton

David Brazil

ARBITRATORS CONCURRING

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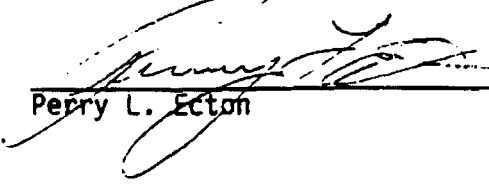
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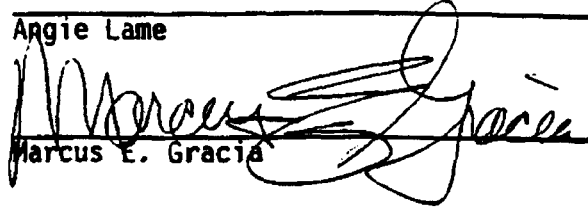
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