

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between )  
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MARY B. KANE AND JAMES M. BARBER, )  
 ) Claimants, )  
 ) Case #87-01708  
vs. ) Award  
 )  
PAINWEBBER, INC. AND )  
JEROME C. KELTER, )  
 )  
 ) Respondents. )  
 )  
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Heard before the members of the Arbitration Panel:

Leonard H. Davidson, Esq.  
Ms. Elizabeth L. Clark  
Mr. Terrence W. Grant

CASE SUMMARY

This claim was filed with the NASD, Inc. in May 23, 1988. The hearing was conducted in Fort Lauderdale, Florida on October 10, 1989 with a total of 2 sessions.

Claimants, Mary Kane ("Kane") and James Barber ("Barber") alleged that Respondents, PaineWebber, Inc. ("PaineWebber") and Jerome Kelter ("Kelter") were liable for: breach of contract; breach of fiduciary duty; negligence; fraud and unsuitability. Additionally, Claimants alleged that PaineWebber was liable for failing to supervise Kelter. Specifically, Claimants alleged that Respondents induced Claimants into purchasing a certain oil and gas limited partnership, which was unsuitable, by failing to disclose material facts; that Respondents failed to deliver a prospectus and failed to disclose all the risks involved with the investment. Respondents alleged that Kelter was properly supervised; the losses were not caused by PaineWebber; that Kane was a sophisticated investor; the investment was suitable; no misrepresentation was made and all the risks were disclosed. Additionally, the Respondents asserted the affirmative defenses of: Statute of Limitations; assumption of risk; ratification; waiver and estoppel and failure to mitigate damages.

## RELIEF REQUESTED

Claimants requested damages in the amount of Thirty One Thousand Two Hundred Forty-One and 00/100 (\$31,241.00) Dollars plus interest, punitive damages, attorney's fees and other costs. Respondents requested dismissal of the claim and other costs.

## AWARD

On October 10, 1989, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on August 3, 1987, by Respondent PaineWebber on December 23, 1987 and by Respondent, Kelter on November 18, 1987. The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

1. 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 originals remain on file with the NASD, Inc.
2. Respondents, PaineWebber and Kelter are hereby liable, jointly and severally, and shall pay to Claimants the amount of Fifteen Thousand Six Hundred and 00/100 (\$15,600.00) Dollars.
3. Respondents, PaineWebber and Kelter are hereby liable, jointly and severally, and shall pay to Claimants the further amount of One Thousand Eight Hundred and Seventy Two and 00/100 (\$1,872.00) Dollars as interest.
4. Respondents, PaineWebber and Kelter are hereby liable, jointly and severally, and shall pay to Claimants the further amount of Two Thousand Five Hundred and 00/100 (\$2,500.00) Dollars as attorney's fees.
5. Pursuant to Section 43 of the Code of Arbitration Procedure, the arbitrators have assessed forum fees in the amount of Eight Hundred and 00/100 (\$800.00) Dollars (\$400.00 x 2 sessions). The Claimants are hereby assessed forum fees in the amount of Four Hundred and 00/100 (\$400.00) Dollars, for which the NASD, Inc. shall retain the Four Hundred and 00/100 (\$400.00) Dollar filing fee previously deposited by

the Claimants in full satisfaction, thereof. The Respondents, PaineWebber and Kelter, are hereby assessed forum fees in the amount of Four Hundred and 00/100 (\$400.00) Dollars for which they are jointly and severally liable and which shall be paid to the NASD, Inc.

#### OTHER ISSUES

None.

#### ARBITRATORS CONCURRING

Leonard H. Davidson, Esq.  
Ms. Elizabeth L. Clark  
Mr. Terrence W. Grant

Dated: October 19, 1989