

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between		}	AWARD CASE NO. 87-02251
Suzanne Karres and Timothy J. Markus	Claimant(s)		
vs.			
Bateman Eichler, Hill Richards, Inc., Timothy Tunney, and PaineWebber, Inc.	Respondent(s)		
PaineWebber, Inc.		}	
	Counterclaimant		
vs.			
Suzanne Karres and Timothy J. Markus	Counter- Respondents		

SUMMARY OF ISSUES

The case was filed on November 17, 1987. Claimant Suzanne Karres ("Karres") opened the accounts in issue as joint accounts with her son Timothy Marcus, ("Marcus"), but the investment objectives were solely those of Karres and the accounts were serviced with Karres individually. Claimant originally opened an account with Timothy Tunney ("Tunney") at Bateman Eichler, Hill Richards, Inc. ("BEHR") and transferred the account with Tunney when he moved to PaineWebber, Inc. ("PW"). Claimant brought this claim against Respondents and alleged violations of the NASD and NYSE Rules and Regulations, breach of fiduciary duty, and misrepresentation; additionally, Claimant alleged, as amended at the hearing, negligence and failure to supervise. Specifically, Karres alleged that Tunney recommended investments which were unsuitable with her stated investment objectives of preservation of capital with growth and that these recommendations became even more unsuitable upon a drastic emotional and financial upheaval in Claimant's personal affairs, of which Claimant advised Tunney; that Karres was induced by Tunney into opening a margin account upon Tunney's representation on two occasions that he was either giving Karres money, or was extending credit to Karres drawn from his own personal funds so she could purchase additional securities on margin; and that Tunney prevented Karres from receiving notice of a margin call by failing to telephone her while she was in Canada, which caused the forced liquidation of one-half of the equity in her account, and which eventually caused a debit balance.

Respondents BEHR and Tunney denied the claims and maintained that the recommended investments were suitable and consistent with Claimant's stated investment objectives, and such recommendations were based in part on purchase recommendations and research by BEHR analysts and on

recommendations from an analyst of the primary underwriter of a particular security. Respondents further maintained that Claimant was at all times aware that she had opened a margin account and understood the nature and extent of the margin transactions in her account, and denied that Tunney made any misrepresentations to Claimant which would give her the impression that she was obtaining from Tunney personal loans of over \$50,000 rather than loans from BEHR secured by the securities in her account. Additionally, Respondents alleged that Claimant's claims are barred by the applicable statute of limitations and that there is no private right of action for alleged violations of industry rules and regulations.

Respondent PW denied the claims and alleged the affirmative defenses of failure to state any recognizable cause of action, contributory negligence, assumption of the risks, estoppel, waiver and ratification, failure to mitigate, and that PW discharged any duties owed to Claimant in good faith under the ordinary prudent man standard. PW filed a counterclaim and alleged damages resulting from an existing debit balance in Claimant's account.

Claimant replied to the counterclaim and denied that PW is owed any funds in any amount by Karres, and alleged the affirmative defenses of estoppel, unclean hands, failure to state a cause of action and performance of a contract.

DAMAGES AND RELIEF REQUESTED

Claimants requested, as amended at the hearing, actual damages in the amount of \$117,435.00 (calculated as follows: \$66,946.00 amount invested, \$20,000.00 trading profit reinvested, and \$30,446.00 interest at 10% for 3 years); attorneys' fees of \$5,000.00, miscellaneous costs of \$500.00, costs incurred by expert witness of \$1,892.00, reimbursement of the \$500.00 filing fee previously paid and unspecified punitive damages; additionally, Claimants requested dismissal of the claims. Respondents BEHR and Tunney requested dismissal of the counter-claims. Respondent PW requested dismissal of the claims and damages in the amount of \$47,698.54 representing the debit balance due and owing, interest, and costs.

DAMAGES AND RELIEF AWARDED

On May 11, 12 and July 13, 1989 in Los Angeles, California, the undersigned arbitrators heard in 6 sessions the controversy between the parties as set forth in submissions to arbitration signed by Claimants Suzanne Karres on February 9, 1988 and Timothy J. Markus on March 8, 1988 and by Respondents Bateman Eichler, Hill Richards, Inc. on May 24, 1988; Timothy Tunney on May 11, 1989; and PaineWebber Inc. on May 11, 1989. 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. Respondents Bateman Eichler, Hill Richards, Inc. and PaineWebber, Inc., are hereby jointly and severally liable for and shall pay to Claimants the sum of Forty-one Thousand Dollars (\$41,000.00).
2. Respondent Timothy Tunney is hereby liable for and shall pay to

Claimants the sum of Five Thousand Dollars (\$5,000.00).

3. The counterclaim is hereby dismissed.

4. The parties shall each bear their respective costs including attorneys' fees.

5. 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, and

b. Respondent Timothy Tunney is hereby assessed forum fees in the amount of \$500.00 and shall pay this sum to the NASD directly.

OTHER ISSUES

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

ARBITRATORS CONCURRING

DATE SERVED: 09/08/89



Norman R. Cohen

Frank Milton Hodgson

George J. Rosen

Claimants the sum of Five Thousand Dollars (\$5,000.00).

3. The counterclaim is hereby dismissed.

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