

N.A.S.D. AWARD -

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

PaineWebber, Inc.

88-02008

Name of Respondent/Counter-Claimant

Dr. Stanley Stern

Names of Counter-Respondents

PaineWebber, Inc. and
Richard Restuccia

REPRESENTATION OF PARTIES

PaineWebber, Inc. and Richard Restuccia were represented by Brigitta K. Siegel, Esq. of PaineWebber, Inc., Weehawken, New Jersey. Stanley Stern was represented by Nicholas F. Coscia, Esq. of Dennis, Coscia & Willelt, Rancho Santa Fe, California.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on June 22, 1988, Claimant PaineWebber, Inc. ("PaineWebber") alleged that Respondent Stanley Stern ("Stern") established a commodity account on or about July 17, 1987. PaineWebber alleged that Stern was advised of the risks attendant to trading in commodities and that Stern was also supplied with written disclosure documents. PaineWebber alleged that Stern placed orders to buy and sell various commodities, commodity options and one equity option and that all orders were executed pursuant to Stern's instructions. PaineWebber alleged that on October 23, 1987, Stern's account incurred a margin call of approximately \$30,000. At this time Stern allegedly instructed his PaineWebber investment executive to liquidate all the positions in his account to meet the call. Respondent Richard Restuccia ("Restuccia") informed Stern that upon liquidation, additional monies were still owed to PaineWebber and Stern agreed to send a check to PaineWebber in order to pay the deficit in full. PaineWebber alleged that despite demand, Stern has failed to repay any portion of the remaining \$9,561.00 indebtedness.

In a Statement of Answer filed with the NASD on September 12, 1988,

- Stern denied all allegations of the Claim. Stern asserted a Counterclaim against PaineWebber and Restuccia alleging that Restuccia and PaineWebber engaged in commodities fraud and churned his account. Stern alleged that he was unsophisticated in the area of futures contracts and that he granted complete discretion to Restuccia over his commodities account.

Stern alleged that all trades were made without any consultation, knowledge or acquiescence by him. Stern alleged that Restuccia violated a fiduciary duty owed to Stern by engaging in excessive trades in Stern's account. Stern alleged that this conduct constituted fraud and a breach of fiduciary duty in the form of churning and was a violation of Section 4(b) of the Commodities and Exchange Act of 1974 as amended.

In a Statement of reply to the Counterclaim, PaineWebber and Restuccia denied the allegations and requested dismissal of the counterclaim.

RELIEF REQUESTED

PaineWebber requested an award of \$9,561.00, interest, filing fees, costs and such other relief as the panel deemed proper. Stern requested dismissal of the claim, costs and such other relief deemed proper. Stern requested damages on his counterclaim of approximately \$70,000, costs, attorney's fees and other relief the panel found justified. PaineWebber and Restuccia requested dismissal of the counterclaim in its entirety.

PROCEDURAL MATTERS

On September 10, 1991 in Scottsdale, Arizona during a hearing lasting a total of two (2) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on June 20, 1988 by Robert L. Salzberg on behalf of Claimant PaineWebber, Inc. and on October 27, 1988 by Respondent Richard Restuccia.

Respondent Stanley Stern did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to the customer agreement executed on or about July 9, 1987 and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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 original(s) remain on file with the NASD.

AWARD

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. Stern is liable for and shall pay to PaineWebber the sum of Nine Thousand Five Hundred Sixty One Dollars and One Cent (\$9561.01);
2. Interest at the rate of 10% per annum is awarded on the above sum

from and inclusive of October 30, 1987 to and inclusive of the date the award is satisfied;

3. Stern's counterclaim against PaineWebber and Restuccia shall be and is hereby denied and dismissed in its entirety;

4. The NASD shall retain any and all postponement fees paid by either party to postpone previously scheduled hearing dates in this matter;

5. The parties shall each bear their own attorney's fees, costs and expenses except forum fees as enumerated below; and

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the hearing session deposit in the amount of \$700.00 previously deposited with the NASD by the Claimant PaineWebber. Additional forum fees in the amount of \$700.00 are assessed to PaineWebber and shall be paid by PaineWebber to the NASD.

DATED:

Panel Members Concurring

K. Leonard Judson, Esq.
Presiding Chair
Public Arbitrator

Harold B. Klaiber
Public Arbitrator


Stephen T. Yeager
Industry Arbitrator

10-9-91

Date Served by NASD: 10-30-91

- from and inclusive of October 30, 1987 to and inclusive of the date the award is satisfied;

3. Stern's counterclaim against PaineWebber and Restuccia shall be and is hereby denied and dismissed in its entirety;

4. The NASD shall retain any and all postponement fees paid by either party to postpone previously scheduled hearing dates in this matter;

5. The parties shall each bear their own attorney's fees, costs and expenses except forum fees as enumerated below; and

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the hearing session deposit in the amount of \$700.00 previously deposited with the NASD by the Claimant PaineWebber. Additional forum fees in the amount of \$700.00 are assessed to PaineWebber and shall be paid by PaineWebber to the NASD.

DATED:

11/7/91

Panel Members Concurring

K. Leonard Judson

K. Leonard Judson, Esq.
Presiding Chair
Public Arbitrator

Harold B. Klaiber
Public Arbitrator

Stephen T. Yeargen
Industry Arbitrator

Date Served by NASD: 10-30-91

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4. The NASD shall retain any and all postponement fees paid by either party to postpone previously scheduled hearing dates in this matter;

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DATED:

Panel Members Concurring

10-1-91

K. Leonard Judson, Esq.
Presiding Chair
Public Arbitrator

Harold B. Klaiber

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Stephen T. Yeargen
Industry Arbitrator

Date Served by NASD: _____