

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Arbitration Matter Between

DANIEL W. SOBIERAY

Claimant

v.

PAINEWEBBER, INC.

Respondent

CASE NO. 88-02036

CASE SUMMARY

Claimant Daniel W. Sobieray ("Sobieray") alleged that the Respondent PaineWebber, Inc. ("PaineWebber") engage in unauthorized trading of Claimants account in a series of transactions in June through September 1985. In addition to unauthorized trading, the Claimant alleged that PaineWebber was negligent, breached its fiduciary duty to Claimant, and violated the Colorado Securities Act when it engaged in the unauthorized acts. PaineWebber maintained that claimant either ordered or verified every trade. Further, PaineWebber counteclaim that the Claimant's claims should be dismissed based on the following affirmative defenses:

1. Claimant was a knowledgeable investor who assumed the risk;
2. Claimant was aware or should have been aware of transactions in this account and therefore is estopped;
3. Claimant is barred by waiver or ratification since Claimant either authorized or ratified all transactions;
4. Claimant waived his claims and injuries by failing to take timely and appropriate action;
5. PaineWebber acted with the proper degree of care; and
6. There is no basis for an award of attorney's fees to the Claimant nor does the panel have the power or the jurisdiction to make such an award.

SUMMARY OF RELIEF REQUESTED

Sobieray requested damages in the amount of \$18,137.48 or in the amount to be proved at the arbitration plus interest and return of a California HFA Hospital Revenue Daniel Freeman Hospital Coupon Bond in the amount of \$10,000.00, plus accumulated unpaid interest and attorneys fees of \$1,500.00 to Ted Davis and fees billed by Nicholas McKeever.

PaineWebber request dismissal of Sobieray's claims and award of its costs incurred for the proceeding.

PROCEDURAL SUMMARY

On June 15, 1988, Sobieray filed his Statement of Claim against PaineWebber. On June 21, 1989 the undersigned arbitrators heard the controversy between the parties set forth in submissions to the arbitration signed by the Sobieray on June 14, 1988, and signed by Robert L. Salzberg on behalf of PaineWebber on August 23, 1988. The hearing consisted of two sessions and was held at the NASD offices in Denver, Colorado.

AWARD

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. PaineWebber shall deliver to Sobieray one California HFA Hospital Revenue Daniel Freeman Hospital Coupon Bond - \$10,000 denomination ("Bond") - in Registered or Coupon Form as may be available.
2. PaineWebber shall pay Sobieray \$468.75 as interest on the Bond.
3. PaineWebber shall pay damages of \$10,000 to Sobieray, with interest being specifically excluded, plus \$3,250.00 for attorneys' fees.
4. Pursuant to Section 43 of the NASD Code of Arbitration Procedure, the NASD shall retain the \$400.00 filing fee previously deposited by Sobieray as one-half of the forum fees' and PaineWebber is assessed forum fees in the amount of \$400.00 payable to the NASD through its staff counsel.

Arbitrators concurring

Dated: 6-26-89

Samuel E. Wing, Esq.
Presiding Chair

Dated: 6-26-89

Carle E. Stenmark

Dated: 6-26-89

Kenneth Webster

Date Served: 7-19-89