

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
FRANK D. FOIL,)
Claimant,)
vs.) Case #88-02507
Award
PAINWEBBER, INC., RICHARD DELSONTRO and)
F. OTTO BUSOT,)
Respondents.)

Heard before the members of the Arbitration Panel:

Mr. Arie Leo Douer
Mr. Harry Polansky
Mr. Douglas Delanoy, Jr.

CASE SUMMARY

This claim was filed with the NASD, Inc. on August 8, 1988. The hearing was conducted in Fort Lauderdale, Florida on September 9th and 10th, 1988 and February 9, 1990 with a total of five (5) sessions.

Claimant Frank Foil ("Foil") alleged that Respondents PaineWebber, Inc. ("PaineWebber"), Richard Delsontro ("Delsontro"), and F. Otto Busot ("Busot") were liable for: misrepresentation; churning; violations of Federal and Florida Securities Laws; breach of fiduciary duty; fraud and negligence, either directly or under the theory of Respondent superior. Additionally, Claimant alleged that PaineWebber and Busot were liable for negligent supervision.

Respondents alleged that Foil: was advised of all the risks; made the decision to exercise his employee stock options and invest in speculative stocks; was suitable for the trading he engaged in and authorized all transactions. Respondents asserted the affirmative defenses of: waiver; estoppel; failure to mitigate damages; comparative negligence; negligence; failure to rely on the statements or omissions; lack of proximate cause; assumption of risk and statute of limitations.

RELIEF REQUESTED

Claimant requested damages in the amount of \$85,061.64 plus interest, punitive damages, attorney's fees and other costs. Respondents requested dismissal of the claim.

AWARD

On September 9th and 10th, 1988 and February 9, 1990, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on July 14, 1988, and by Respondents PaineWebber and Busot on December 21, 1988, and Delsontro on February 4, 1989. 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, Delsontro and Busot are hereby liable, jointly and severally, and shall pay to the Claimant the amount of Sixty Three Thousand Seven Hundred Ninety Six and 23/100 (\$63,796.23) Dollars inclusive of interest at the legal rate of 12% per annum.
3. Claimant's request for attorney's fees is hereby dismissed in all respects.
4. Claimant's request for punitive damages is hereby dismissed in all respects.
5. Pursuant to Section 43 of the Code of Arbitration Procedure, the arbitrators have assessed forum fees in the amount of Three Thousand Seven Hundred Fifty and 00/100 (\$3,750.00) Dollars. The Claimant is hereby assessed forum fees in the amount of Seven Hundred Fifty and 00/100 (\$750.00) Dollars. Respondent PaineWebber is hereby assessed forum fees in the amount of Three Thousand and 00/100 (\$3,000.00) Dollars payable to the NASD, Inc. The National Association of Securities Dealers, Inc. shall retain the Seven Hundred Fifty and 00/100 (\$750.00) Dollar filing fee previously deposited by the Claimant in full satisfaction of Claimant's share of such forum fees.
6. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

OTHER ISSUES

None.

ARBITRATORS CONCURRING

Mr. Arie Leo Douer
Mr. Harry Polansky
Mr. Douglas Delanoy, Jr.

Dated: February 15, 1990