

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Radford S. Fisher, individually and  
as trustee

Claimant

and

PaineWebber, Inc. and  
William Foster

Respondents

A W A R D  
88-02658

CASE SUMMARY

In a claim filed with the NASD on or about August 22, 1988, Claimant Radford S. Fisher ("Fisher") alleged that Respondents PaineWebber, Inc. ("PaineWebber") and William Foster ("Foster") acquired certain speculative and unsuitable bonds and equity securities for Fisher's account. The acquisition of these securities for Fisher was alleged to have caused him a substantial monetary loss in violation of the NASD Rules of Fair Practice. Additionally, PaineWebber and Fisher were alleged to have negligently handled Fisher's account and misrepresented the risk status of the bond purchases. PaineWebber's conduct was also alleged to have violated the Arizona Racketeering Statute.

PaineWebber and Foster denied the allegations of the claim and asserted that Fisher was suitable for the investments made in his account. Additionally, PaineWebber and Foster asserted certain affirmative defenses including, but not limited to, assumption of risk, ratification, waiver and estoppel.

RELIEF REQUESTED

Fisher sought damages of \$63,662.15 plus reasonable attorneys' fees, costs and expenses and treble damages under the Arizona RICO Statute.

PaineWebber and Foster requested dismissal of the claim in its entirety and assessment of costs of the proceeding against Fisher.

#### AWARD

On Thursday, December 14, 1989, in Phoenix, Arizona during a hearing lasting two sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on September 1, 1988 by Claimant Radford S. Fisher, on March 3, 1989 by John A. Borgese on behalf of Respondent PaineWebber, Inc. and on April 5, 1989 by Respondent William B. Foster.

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. Respondents PaineWebber and Foster are jointly and severally liable for and shall pay to Fisher, the sum of Seven Thousand Four Hundred Sixteen Dollars and Seventy Five Cents (\$7,416.75);

2. Respondents PaineWebber and Foster are also jointly and severally liable for and shall pay to Fisher, as reasonable attorneys' fees, the sum of Three Thousand Eight Hundred Twenty Eight Dollars and No Cents (\$3,828.00). In determining this portion of the award, the panel determined it had authority to award attorneys' fees under Arizona Revised Statutes, Title 12, Section 12.341.01 and Sweis v. Chatwin, 120 Ariz. 249, 585 p.2d 269 (Ct. App. 1978);

3. Fisher's RICO claim shall be and is hereby specifically dismissed in all respects;

4. Except as set forth otherwise herein, the parties shall each bear their respective costs, expenses and attorneys' fees incurred in this matter; and

5. Pursuant to Section 43(b) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain as forum fees the \$1,000.00 filing fee previously deposited with the NASD by the Claimant and no additional forum fees are assessed against any party to this proceeding.

By the Panel

Dated: January 30, 1990  
Presiding Chairman

/S/ I. Douglas Dunipace, Esq.

Dated: January 30, 1990

/S/ Stephen Venezia, Esq.

Dated: January 30, 1990

/S/ George E. Hartz, Jr.