

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Robert M. And Jeane M. Shiells

Claimants

vs.

Marc W. Vraciu and
PaineWebber, Inc.

Respondents

AWARD

NASD #88-02740

REPRESENTATION

Claimants were represented by J. Thomas Hannan and Jeffrey C. Scharfen of Lovitt & Hannan. Respondents were represented by Judy Louie of PaineWebber, Inc.

SUMMARY OF ISSUES

This case was filed with the National Association of Securities Dealers, Inc. ("NASD") on August 29, 1988. Claimants alleged violations of state and federal securities laws, RICO violations, fraud, negligent misrepresentation, and breach of fiduciary duty. Specifically, Claimants alleged that Respondents churned Claimants' account by engaging in excessive trading in order to generate commissions; that Respondents recommended and solicited unsuitable investments in Claimants' account; and that Respondent PaineWebber failed to adequately supervise its employee and registered representative.

Respondents denied the allegations and maintained that Claimants had a non-discretionary account in which Claimants controlled the trading activity; that the trading activity was suitable for Claimants' stated investment objectives and aggressive strategy; and that Respondents satisfied their fiduciary obligations to Claimants and properly supervised their employee. Respondents asserted affirmative defenses including failure to state a cause of action, waiver, estoppel, and ratification.

DAMAGES AND RELIEF REQUESTED

In their Statement of Claim, Claimants requested damages in the amount of \$43,000 or according to proof, treble damages under RICO, interest, punitive damages, attorneys' fees and costs.

Respondents requested dismissal of the claim and that costs be assessed against Claimants.

PRE-HEARING SESSIONS

1 On April 26, 1991 a pre-hearing conference was held in accordance with Section 32 of the NASD Code of Arbitration Procedure via telephone conference call. The hearing lasted one (1) session.

DAMAGES AND RELIEF AWARDED

On April 30, and May 1, 1991 the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on August 22, 1988 and by Respondent PaineWebber, Inc on June 12, 1989. Respondent Marc W. Vraciu filed a signed Uniform Submission Agreement but did not date nor notarize his signature. Respondent Vraciu is subject to the jurisdiction of this arbitration pursuant to Sections 1 and 8 of the NASD Code of Arbitration Procedure, and appeared at the hearing with counsel.

The hearing was conducted in San Francisco, California and lasted five (5) sessions. 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 as follows:

1. Respondents are hereby jointly and severally liable for and shall pay to Claimants the sum of Forty-Seven Thousand, Eight Hundred Ninety Dollars and Zero Cents (\$47,890.00) representing compensatory damages plus interest calculated at eight percent (8%) from March 1985 to May 1985. *AR*

2. The claims for punitive damages and RICO damages are denied.

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

4. In accordance with Section 43 of the NASD Code of Arbitration Procedure:

a. the NASD shall retain the \$750 filing fee previously deposited by the Claimants. In addition, Claimants are assessed the sum of \$300 representing forum fees for the pre-hearing conference held on April 26, 1991; and

b. Respondents are jointly and severally assessed the sum of \$1,500 representing forum fees to be paid to the NASD directly.

OTHER ISSUES

This case was originally filed naming Drexel Burnham Lambert, Inc. as a respondent. On May 29, 1990 Drexel filed a voluntary petition in bankruptcy pursuant to Chapter 11 of the Bankruptcy Code, and under Section 362(a) of the Code this proceeding against Drexel was automatically stayed.

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

ARBITRATORS CONCURRING

DATE SERVED: 06/05/91



Armin Rosencranz
