

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

James E. and Martha G. Sacra

Claimants

and

PaineWebber, Inc.
Don Vogel

Respondents

A W A R D
88-02964

CASE SUMMARY

In a claim filed with the NASD on September 20, 1988, James E. Sacra and Martha G. Sacra ("Claimants") alleged that PaineWebber, Inc. and Don Vogel ("Respondents") breached their fiduciary duty to Claimants, were negligent in their handling of the Claimants' account, and made fraudulent misrepresentations with respect to a limited partnership investment. Further, Claimants alleged violation of the NASD Rules of Fair Practice, Article III, Section 2.

Respondents stated that the limited partnership investment was a suitable investment at the time of the Claimants' purchase and that the Statement of Claim failed to state a cause of action upon which relief could be granted. Further, Respondents asserted the affirmative defenses of estoppel, waiver, ratification, laches, collateral estoppel, res judicata, accord and satisfaction and assumption of risk.

RELIEF REQUESTED

Claimants requested that Respondents rescind the limited partnership investment and make the Claimants whole, including but not limited to, any tax liabilities incurred, less any tax benefits realized by the Claimants. In the alternative, Claimants requested an amount in damages as determined by the panel of arbitrators.

Respondents requested that the Statement of Claim be dismissed and the costs of the hearing be assessed against the Claimants.

AWARD

On Wednesday, August 30, 1989 and Thursday, September 7, 1989 during a hearing lasting four sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on September 13, 1988 by Claimants James E. and Martha G. Sacra, on December 7, 1988 by Garry J. Stegeland on behalf of Respondent PaineWebber, Inc. and on December 12, 1988 by Respondent Donald E. Vogel.

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 Vogel are jointly and severally liable for, and shall pay to Claimants, jointly, the sum of Three Hundred Sixty Four Thousand, Six Hundred Seventy Nine Dollars and No Cents (\$364,679.00);
2. The parties shall each bear their respective costs and expenses including any attorneys' fees incurred in this matter; and
3. 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 Claimants and Respondents PaineWebber and Vogel are assessed jointly and severally, and shall pay to the NASD, the sum of \$2,000.00 as additional forum fees. Claimants are also assessed and shall pay to the NASD, as additional forum fees, the sum of \$1,000.00.

Panel Members Concurring

Dated: September 14, 1989

/S/ Ninian M. Edwards, Esq.
Presiding Chairman

Dated: September 19, 1989

/S/ Donald E. Walter, Esq.

Panel Member Dissenting

Dated: September 18, 1989

/S/ Robert M. Livingstone, Esq.