

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Rudolph J. & Patricia A. Malusa

88-03008

Name of Respondent(s)

PaineWebber, Inc.
Susan Fisher & John Doe Fisher
Rudolph L. Ferlan & Jane Doe Ferlan

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about September 26, 1988, Rudolph J. and Patricia A. Malusa ("Claimants") alleged that PaineWebber, Inc., Susan Fischer, John Doe Fischer, Rudolph L. and Jane Doe Ferlan (collectively "Respondents"): 1) induced Claimants into purchasing unsuitable securities; 2) omitted and misrepresented material facts in connection with the purchase of the security; 3) misrepresented the performance of the security; 4) breached their fiduciary duty to the Claimants; 5) failed to disclose the risks attendant to the security; and, 6) excessively traded Claimants' account

In an answer filed on or about February 14, 1989, and as may have been subsequently amended, Respondents denied all allegations of wrongdoing contained in the Statement of Claim and asserted: 1) any damages claimed to have been sustained by the Claimants, if any, were caused or contributed to by the Claimants; 2) Claimants had knowledge of and assumed the risks incident to investing in the securities; 3) Claimants are estopped from bringing this action; 4) Claimants authorized all transactions in their account; 5) Claimants failed to take timely and appropriate action prior to incurring such damages; 6) Respondents acted in good faith in discharging their duties to the Claimants; 7) Claimants have unclean hands and are barred from recovery; and, 8) the Statement of Claim fails to state a cause of action for relief.

Respondent Susan Fischer brought a counterclaim against the Claimants for costs, loss of revenues and attorney's fees.

RELIEF REQUESTED

Claimants requested compensatory damages of no less than \$56,000.00, interest and commissions paid to PaineWebber, punitive damages, costs and attorney's fees.

Respondent Susan Fischer requested costs, attorney's fees and damages for loss of revenues.

AWARD

On March 14 and 15, 1991 in Phoenix, Arizona during a hearing lasting a total of four (4) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on September 21, 1988 by Claimants Rudolph J. and Patricia A. Malusa, on March 22, 1989 by John A. Borgese on behalf of Respondent PaineWebber Incorporated.

Respondents Susan Fischer and Rudolph Ferlan did not file with the NASD properly executed submissions to arbitration but are required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure and having answered the claim, appeared and testified at the hearing, are bound by the determination of the arbitration panel on all issues submitted.

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 original remains on file with the NASD.

After considering the pleadings, the testimony, and the evidence presented at the hearing, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents PaineWebber, Inc., Susan Fischer and Rudolph Ferlan, are hereby liable, jointly and severally, and shall pay to Claimants Rudolph J. and Patricia A. Malusa, damages in the amount of Fifty Thousand and 00/100 (\$50,000.00) Dollars;
2. The claims, as asserted against Respondents John Doe Fischer and Jane Doe Ferlan, are hereby denied in their entirety;
3. The counterclaim, as asserted by Respondent Susan Fischer, is hereby denied in its entirety;
4. All other requests for relief are denied;
5. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding;
6. All requests for attorney's fees incurred in connection with this matter by the parties are denied; and

7. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the hearing session deposit in the amount of \$750.00 previously deposited with the NASD by the Claimant.

By the Panel

Dated: March 28, 1991

George W. Kasserman Jr.
George W. Kasserman
Presiding Chair, Public Arbitrator

Dated: _____

Robert Torcivia, Industry Arbitrator

Dated: _____

Nelson H. Layman, Public Arbitrator

88-3008

7. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the hearing session deposit in the amount of \$750.00 previously deposited with the NASD by the Claimant.

By the Panel

Dated: _____

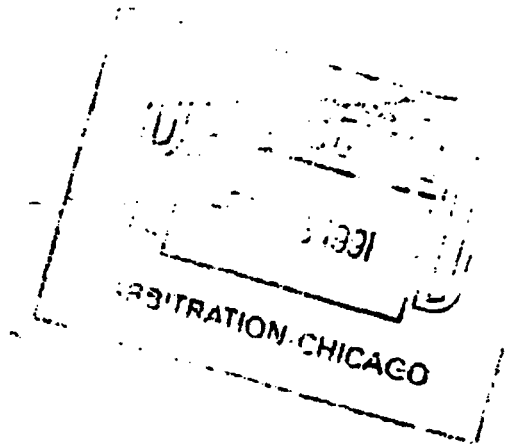
George W. Kassarman
Presiding Chair, Public Arbitrator

Dated: 4/2/91

Robert Torcivia
Robert Torcivia, Industry Arbitrator

Dated: _____

Nelson H. Layman, Public Arbitrator



88-3008

7. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the hearing session deposit in the amount of \$750.00 previously deposited with the NASD by the Claimant.

By the Panel

Dated: _____

George W. Kasserman
Presiding Chair, Public Arbitrator

Dated: _____

Robert Torcivia, Industry Arbitrator

Dated: 4-1-91

Nelson H. Layman
Nelson H. Layman, Public Arbitrator