

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Charles & Joyce Sablatura

88-03339

Name of Respondent(s)

PaineWebber, Inc.
T. David Porter

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers Inc. ("NASD") on October 27, 1988, Claimants Charles and Joyce Sablatura alleged that Respondent T. David Porter, while acting as an agent of Respondent PaineWebber, Inc., engaged in the following actions while handling the Claimant's commodities trading account:

- 1) Traded in Claimant's account on margin without authorization;
- 2) Improperly handled a transaction in the British Pound;
- 3) Engaged in the unauthorized trade of commodity future soy bean spreads and failed to correct the matter after it was immediately brought to Respondent's attention.

In addition, Claimants allege numerous irregularities in the monthly statements showing unauthorized transactions and excessive commissions which were corrected and termed "computer error" by Respondent. These allegations were not presented as a claim, but to provide a "complete picture" of the handling of their account.

In a Statement of Answer filed with the NASD on March 2, 1989, Respondent PaineWebber, Inc. denied the substantive claims and further denied any liability for monetary damages. Respondent alleged that Claimants were suitable for the type of investments made; all trades were made with Claimant's full understanding and authority; Claimants were informed of the risk of commodities trading; and, Respondent is not responsible for market fluctuation. In addition, Respondent asserted the following affirmative defenses:

- 1) The Statement of Claims fails to state a cause of action upon which relief can be granted;

- 2) Respondents acted in compliance with applicable rules and regulations and did not directly induce the alleged violations of law;
- 3) The damage allegedly suffered had no causal relationship with the acts committed by Respondent PaineWebber or its agents;
- 4) Claimants failed to mitigate their damages;
- 5) The Statement of Claim is barred, in whole or in part, by the applicable statute of limitations and by the doctrines of waiver, ratification and estoppel;
- 6) The transactions complained of were duly authorized by Claimants who were in sole control of their account; and,
- 7) Claimants did not reasonably rely on their detriment on action or inaction of Respondents.

In a letter received by the NASD on May 18, 1990, Respondent T. David Porter adopted the Statement of Answer filed by Respondent PaineWebber, Incorporated.

RELIEF REQUESTED

Claimants Charles and Joyce Sablatura requested entry of an award against Respondents PaineWebber, Inc. and T. David Porter in the answer of \$20,829.99 plus exemplary damages, interest, costs, and attorney's fees.

Respondents PaineWebber, Incorporated requested that the Statement of Claim be dismissed and that costs be assessed against Claimants.

OTHER ISSUES

On the hearing date of August 22, 1990, Claimants requested to amend the Statement of Claim to include a claim under the Texas Deceptive Trade Practices Act. After hearing argument from all parties, the arbitrators determined that the amendment would be allowed and that Claimants could request treble damages pursuant to the statute.

PROCEDURAL MATTERS

On August 22, 1990 and February 27th, 1991 in Houston, Texas 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 October 24, 1988 by Claimants Charles and Joyce Sablatura; on February 28, 1989 by Paul M. Foster on behalf of Respondent PaineWebber, Incorporated; and, on February 27, 1991 by Respondent T. David Porter.

Prior to convening the second day of hearing, Respondents submitted a Motion to Dismiss parts of the Statement of Claim based upon the evidence presented. The motion and Claimant's response were submitted to the panel

who denied the motion.

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.

AWARD

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, Incorporated and T. David Porter are jointly and severally liable for and shall pay to Claimants Charles and Joyce Sablatura the sum of \$16,653.00;
2. The parties shall each bear their own costs, including attorney's fees, except for those specifically enumerated herein;
3. 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 \$500.00 previously deposited with the NASD by the Claimant Charles and Joyce Sablatura. Claimants Charles and Joyce Sablatura are liable for and shall pay to the NASD additional forum fees of \$300.00. Respondents PaineWebber Incorporated and T. David Porter are jointly and severally liable for and shall pay to the NASD additional forum fees of \$800.00.

Dated:

APRIL 19, 1991

Justin Morrill
Presiding Chair

John W. Field
Public Arbitrator

Thomas J. Lisenby
Industry Arbitrator

who denied the motion.

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.

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Dated:

Justin Morrill
Presiding Chair

John W. Field
Public Arbitrator

Thomas J. Lisenby

Thomas J. Lisenby
Industry Arbitrator

April 22, 1991

who denied the motion.

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.

AWARD

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Dated:

5/23/91



Justin Morrill
Presiding Chair

John W. Field
Public Arbitrator

Thomas J. Lisenby
Industry Arbitrator