

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Jamie Townsend Albright

89-00191

Name of Respondent(s)

William Lozier and PaineWebber,
Jackson and Curtis

CASE SUMMARY

In a Statement of Claim filed with the NASD on January 24, 1989, Claimant Jamie Townsend Albright alleged the Respondent engaged in conduct as follows:

1. Entered into a position to exercise control over the volume and frequency of trading in her securities account as a result of her lack of sophistication;
2. From June, 1983 through February, 1984, induced activity in her account which was excessive in light of her investment objectives for the purpose of obtaining commissions;
3. Invested in limited partnership interests which were unsuitable for Claimant's stated investment objectives;
4. Misrepresented the performance of Claimant's account through correspondence from Respondent Lozier to Claimant purporting to show gains when, in fact, the net worth of the account dropped; and,
5. Acted with an intent to defraud Claimant, or with such willful and reckless disregard for her interests as to be tantamount to an intent to defraud.

In a Statement of Answer filed with the NASD on April 14, 1989, Respondent PaineWebber Incorporated, named herein as PaineWebber Jackson and Curtis and Respondent William Lozier denied all allegations set forth in the Statement of Claim and further denied that they were liable to the Claimant for the monetary damages allegedly sustained by the Claimant. Specifically, Respondents allege that:

1. All trades in Claimant's account were made with Claimant's full understanding, authority and conformance with her stated investment objectives;

2. The investments complained of were clearly suitable for Claimant's investment objectives (i.e. income) and financial background as stated;

3. The transactions in Claimant's account were accurately reflected on monthly statements of account and confirmation slips which were sent to Claimant on a timely basis and on duplicate confirmation slips and monthly account statements sent to Claimant's attorney at her request;

4. The decline in the account value was the result of legitimate market fluctuations and unforeseeable market conditions; and,

5. Respondents discharged their responsibilities in a proper, prudent and professional manner in accordance with all acceptable brokerage procedures and all exchange and governmental regulations.

In addition, Respondents asserted the following affirmative defenses:

1. The statement of claim failed to state a cause of action upon which relief could be granted;

2. Respondents acted in good faith and did not directly induce the alleged act or acts, if any, constituting violations of law;

3. The damages alleged had no causal relationship with any act committed by or legally attributable to Respondents;

4. The Statement of Claim is barred, in whole or in part, by the doctrines of ratification and estoppel, and by the applicable Statute of Limitations;

5. Claimant's failure to mitigate her damages was the cause of her damages, in whole or in part;

6. Claimant unreasonably relied to her detriment on any action or inaction of Respondents;

7. The transactions complained of were duly authorized by Claimant who was in sole control of the assets in her account; and,

8. Claimant knew and understood the risks associated with the investments in her account and represented herself as willing and able to assume those risks.

RELIEF REQUESTED

Claimants requested that an award be entered against Respondents for compensatory damages in the amount of \$193,432.55; for punitive damages of \$500,000.00; for reasonable attorneys' fees and all costs of this proceeding.

Respondent requested that the Statement of Claim be, in all respects, dismissed and that costs be assessed against Claimant.

AWARD

On September 6 and 7, 1990, in Omaha, Nebraska during a hearing lasting three sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on January 16, 1989 by Claimant Jamie Albright, on April 11, 1989 by John A. Borgese on behalf of Respondent PaineWebber Incorporated, named in this action as PaineWebber, Jackson and Curtis, and on April 21, 1989 by Respondent William Lozier.

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 William Lozier shall be and hereby are jointly and severally liable for and shall pay to the Claimant Jamie Townsend Albright the sum of Seventy Five Thousand Dollars (\$75,000.00) which sum includes interest;

2. No punitive damages are awarded herein;

3. Each party shall bear their own costs and expenses including attorneys and expert witness fees incurred in this matter not specifically enumerated herein;

4. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall refund the filing fee deposit in the amount of \$1,000.00 previously deposited with the NASD by the Claimant. Respondents are jointly and severally liable for and shall pay to the NASD the sum of \$3,000.00 as forum fees.

By the Panel

Dated: _____ /S/ Robert M. Berkshire
Presiding Chair
Robert Berkshire, Esq.

Dated: _____ /S/ _____
Arnold J. Stern, Esq.

Dated: _____ /S/ _____
Joseph Soshnik

DATE SERVED: NOVEMBER 19, 1990

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By the Panel

Dated: _____ /S/ _____
Presiding Chair
Robert Berkshire, Esq.

Dated: _____ /S/ _____
Arnold J. Stern, Esq.

Dated: November 1, 1990 /S/ Joseph Soshnik
Joseph Soshnik

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By the Panel

Dated: _____ /S/ _____
Presiding Chair
Robert Berkshire, Esq.

Dated: NOVEMBER 2, 1990 /S/ Arnold J. Stern
Arnold J. Stern, Esq.

Dated: _____ /S/ _____
Joseph Soshnik