

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

James W. Near

Claimant

vs.

PaineWebber, Inc. and
John R. Stewart

Respondents

*

*

*

*

*

*

*

*

CASE #89-01931
AWARD

CASE SUMMARY

Claimant, James Near alleged that Respondent, John R. Stewart, by acting as Claimant's account executive, traded Claimant's account without authorization, recommended and invested in unsuitable investments, misrepresented account balances and other matters to Claimant, and breached a fiduciary duty to Claimant. Claimant further alleged that Respondent Paine Webber, Inc. failed to adequately supervise Respondent Stewart and misrepresented account balances and other matters to Claimant.

Respondents maintained that Claimant authorized all trades executed in his account, after having been fully advised of the risks attendant to such investments, and that all investments made on behalf of Claimant were suitable.

RELIEF REQUESTED

Claimant seeks an award of \$287,473.16 compensatory damages in net losses and interest and \$287,473.16 in punitive damages. Alternatively, Claimant requests an award of \$355,280.11 compensatory damages for losses in index option trading and interest, and \$355,280.11 in punitive damages.

AWARD

On June 18, August 20, 21 and 22, 1990, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant, on June 20, 1989 and by the Respondent PaineWebber on October 17, 1989 and by

Respondent John R. Stewart on October 17, 1989.

The hearing was held in Columbus, Ohio and consisted of 7 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 for determination as follows:

1. Respondents, jointly and severally, are liable to the Claimant for \$350,000.00 (Three Hundred Fifty Thousand Dollars) in compensatory damages;
2. Respondents are not liable to Claimant for punitive damages.
3. The parties shall each bear their respective costs including attorney's fees;
4. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$750.00 filing fee previously deposited by the Claimant.
5. Respondents jointly and severally, are assessed forum fees in the amount of \$5,250.00 payable to the NASD, Inc. through its staff counsel in accordance with Section 43 of the Code of Arbitration Procedure.

CONCURRING ARBITRATOR

/s/
Benjamin B. Segel, Esq.

/s/
Norman H. Leonard

/s/
James A. Melfi

DATE: September 5, 1990