

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Phillips J. Goodenough & Bartolero

89-02815

PaineWebber, Inc.

Lawrence W. Daly

REPRESENTATION

For Claimant: Mr. Robert Rusky, Esq. of Hanson, Bridgett, Marcus, Vlahos and Rudy.

For Respondent, Paine Webber, Inc. : William Montgomery, Esq. of PaineWebber, Inc.

For Respondent, Lawrence W. Daly: Michael E. Myers of Gordon & Rees

CASE INFORMATION

Statement of Claim filed: October 12, 1989

Claimant's Submission Agreement signed on: March 30, 1989

Statement of Answer filed by Respondent, PaineWebber, Inc. on: February 12, 1990

Respondent, PaineWebber, Inc.'s Submission Agreement signed on: February 5, 1990

Statement of Answer filed by Respondent, Lawrence W. Daly on: May 29, 1990

Respondent, Lawrence C. Daly's Submission Agreement signed on: August 21, 1991

HEARING INFORMATION

Hearing Date(s)/Sessions: August 21 and 22, 1991 - five sessions

Hearing Location: San Francisco, California

CASE SUMMARY

Claimant(s), alleged breach of fiduciary duty, fraud, and violations of the California Corporate Securities Law, sections 12(1) and 12(2) of the Securities Act of 1933 and section 10(b) of the Securities Act of 1934. Claimant alleged that Respondents breached their fiduciary duties by negligently failing to execute a sell order with respect to securities held by Claimant Goodenough in American Bionetics, Inc..

Respondent, PaineWebber, Inc., alleged that the claim is groundless for at least three reasons: 1) there was no good order to sell in February 1987 because of the holding restrictions, 2) there was no firm or broker discretionary trading authority to put a sell order on, and 3) there was no firm or broker time and

price discretion to put on a sell order based on Goodenough's previous interest in selling his stock in February. PaineWebber, Inc. also alleged that Claimant has waived his right to bring this cause of action and should be precluded from recovery because of his failure to mitigate damages. PaineWebber also asserted various affirmative defenses. Respondent, Lawrence Daly, alleged that Claimant never communicated a valid sell order to Mr. Daly and in fact rejected the idea of selling the stock when it became available for sale. Daly further alleged that any claim that Claimant may have concerning his 144 stock is precluded by his failure to mitigate his damages, as Goodenough knew or should have known that no sell order had been executed.

#### RELIEF REQUESTED

Claimant(s) requested damages in an amount according to proof, consisting of the as yet undetermined principal sum consisting of the value of the stock for which it could have been sold, plus interest, less the present value of the stock; plus consequential and general damages according to proof. Claimant also requested costs and such other relief as is deemed just and proper.

Respondent, PaineWebber, Inc., requested that the Statement of Claim be dismissed against the Claimant. Respondent, Lawrence Daly, requested that the arbitrators render an award in favor of Mr. Daly.

#### AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrator(s) has/have decided in full and final resolution of the issues submitted for determination as follows:

1. Each and every claim of Claimant is dismissed.
2. The parties shall each bear their own attorneys fees and costs.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award be entered. In either case, the parties have agreed to receive conformed copies of the Award while the original(s) remain on file with the NASD.

#### FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$750 filing fee previously deposited by the Claimant. Respondent PaineWebber, Inc. is liable for reimbursing Claimant said \$750. Further, Respondent PaineWebber, Inc. is assessed forum fees in the sum of \$3000, calculated as follows: 5 sessions x \$750 = \$3750 minus the fee of \$750 paid by Claimant = \$3,000.

Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATION PANEL

Public/Industry

Public

Public

Industry

James C. Stone  
James C. Stone  
9/24/91

Date of Decision: 9/24/91

Served 10/16/1991