

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Zipora Langberg

89-03315

Name of Respondent(s)

Sutro & Co. Incorporated

PaineWebber Group, Inc.

John "Sandy" McCall Jr.

REPRESENTATION

For Claimant: Robert Dunn, Esq., of the lawfirm of Bancroft, Avery and McAlister (San Francisco, California)

For Respondents: Peter Boutin, Esq., of the lawfirm of Keesal, Young and Logan (San Francisco, California)

CASE INFORMATION

Statement of Claim filed: 11/27/89

First Amended Statement of Claim filed: 4/5/90

Second Amended Statement of Claim filed: 6/20/90

Claimant's Submission Agreement signed on: November 11, 1989

Statement of Answer filed by Respondents Sutro and McCall on: 2/2/90.

Statement of Answer to First Amended Statement of Claim filed by Respondents Sutro and McCall: 5/25/90

Statement of Answer to Second Amended Statement of Claim filed by Respondents Sutro and McCall: 8/30/90

Respondent Sutro's Submission Agreement signed on: 1/29/90

Respondent McCall's Submission Agreement signed on: 12/20/89

Statement of Answer filed by Respondent PaineWebber on: 2/27/90

Statement of Answer to First Amended Statement of Claim filed by Respondent PaineWebber on: 5/22/90

Statement of Answer to Second Amended Statement of Claim filed by Respondent PaineWebber on: 1/28/91

Respondent PaineWebber's Submission Agreement signed on: 2/5/90

## HEARING INFORMATION

### Hearing Date(s)/Sessions:

July 8-10, 1991  
August 9, 12-16, 19, 1991  
September 9, 1991

21 sessions total

Hearing Location: San Francisco, California

## CASE SUMMARY

Claimant filed a Statement of Claim, a First Amended Statement of Claim, and a Second Amended Statement of Claim. In the Second Amended Statement of Claim Claimant alleged that between June 1985 and June 1989, Respondents purchased speculative and unsuitable securities, including limited partnership interests, for Mrs. Langberg. Claimant claimed damages for 1) violations of the federal and state securities laws and rules, the Rules of the New York Stock Exchange, the NASD Rules of Fair Practice; 2) for fraud, breach of fiduciary duty and negligence under applicable state common law; and 3) for failure to supervise.

Respondent Sutro & Co. and John "Sandy" McCall alleged that Langberg was a sophisticated investor, businesswoman and former real estate agent who was intimately involved in the management of her PaineWebber and Sutro accounts, that Claimant's damage claims are vastly overstated, and that certain of the investments about which Langberg complains are expected to be profitable investments. Respondents Sutro and McCall alleged that the transactions in Mrs. Langberg's accounts were not unsuitable; that Respondents did not owe a fiduciary duty to Mrs. Langberg and, in any event, they did not breach any duties allegedly owing to Mrs. Langberg; that Respondents did not engage in any fraudulent activity in the handling of Mrs. Langberg's accounts, that Mrs. Langberg's claim for negligence is meritless; that Mrs. Langberg ratified the handling of her account and she is estopped from asserting her claims; that Mrs. Langberg had a duty of reasonable diligence which must have been exercised to create a right of recovery; and that Mrs. Langberg's claims are time-barred. Sutro and McCall asserted that Mrs. Langberg failed to mitigate any alleged damages, that she is not entitled to speculative, unrealized profits, and that her punitive damage claim is without merit. In their Answer to Claimant's Second Amended Statement of Claim, Respondents Sutro and McCall asserted that Claimant should be estopped from claiming that all four of the limited partnerships enumerated in the Statement of Claim were unsuitable inasmuch as Claimant had dropped two of the limited partnerships from the Amended Statement of Claim.

Respondent PaineWebber denied that any of the investments made by Mrs. Langberg while her account was at PaineWebber were unsuitable in any of the ways Claimant suggests, denied that it had a fiduciary duty to Claimant, and asserts that even if it did have such a duty, that duty was not breached; denied that it failed to exercise reasonable supervision of McCall's activities; denied that it was negligent with respect to management of Mrs. Langberg's account or that it breached any duty it owed her; denied all allegations of wrongdoing made by Mrs. Langberg in her Statement of Claim; denied that she suffered any damages as a result of any wrongful acts it may have done; and denied it is liable for any damages whatever. PaineWebber asserted six affirmative defenses.

### RELIEF REQUESTED

Claimant requested: 1) damages in an amount not less than \$493,200.16; 2) the profits she would have earned had her funds been properly invested in suitable securities; 3) interest on all compensatory damages; 4) attorneys' fees and costs of arbitration; 5) punitive damages and 6) such other relief as the arbitrators deem proper.

Respondents Sutro and McCall requested that the Claim be dismissed and that they be awarded their costs of suit. Respondent PaineWebber requested dismissal of all claims as against them and requested an assessment of any costs of the proceeding against Claimant.

### AWARD

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 and McCall are liable for and shall pay to Claimant the sum of Sixty Three Thousand, Three Hundred Ninety Seven Dollars (\$63,397.00). Said liability is joint and several.
2. Respondents Sutro and McCall are liable for and shall pay to Claimant the sum of Two Hundred Eighty Nine Thousand, Five Hundred Forty Seven Dollars (\$289,547.00). Said liability is joint and several.
3. As a prerequisite to Claimant receiving payment under paragraphs 1 and 2, above, Claimant is directed to tender her entire ownership in the following investments, as follows:
  - (a) To PaineWebber, Inc.:
    - Centocor Partners (limited partnership)
  - (b) To Sutro & Co. and Sandy McCall:
    - Kiahuna Investors Ltd., aka Kiahuna (limited partnership)
    - Kona Oceanfront Properties, aka Kona (limited partnership)
    - Tucson Downtown Hotel Partners Ltd., aka Tucson Ramada or Downtown Hotel (limited partnership)
    - Papercraft (bonds)
4. Pursuant to the New Account Agreement, Respondents are liable for and shall pay to Claimant attorneys fees as follows:
  - (a) Respondents PaineWebber and McCall are liable for and shall pay to Claimant the sum of Seventeen Thousand One Hundred Dollars (\$17,100). Said liability is joint and several.
  - (b) Respondents Sutro and McCall are liable for and shall pay to Claimant the sum of Seventy Seven Thousand Nine Hundred Dollars (\$77,900). Said liability is joint and several.
5. Claimant's claim for punitive damages is dismissed.

### FORUM FEES

In accordance with Section 43c of the NASD Code of Arbitration Procedure, the NASD shall retain the \$750 filing fee previously deposited by the Claimant as an assessment of forum fees by the arbitrators.

Respondents are liable for reimbursing Claimant said \$750 as follows:

- (a) Respondents PaineWebber and McCall are jointly and severally liable for reimbursing Claimant One Hundred Thirty Five Dollars (\$135), and
- (b) Respondents Sutro and McCall are jointly and severally liable for reimbursing Claimant Six Hundred Fifteen Dollars (\$615).

Respondents are also assessed forum fees as follows, to be paid directly to the National Association of Securities Dealers, Inc.:

- (a) Respondents PaineWebber and McCall are jointly and severally liable for forum fees in the amount of Two Thousand Seven Hundred Dollars (\$2,700);, and
- (b) Respondents Sutro and McCall are jointly and severally liable for forum fees in the amount of Twelve Thousand Three Hundred Dollars (\$12,300).

The above forum fees were assessed as follows: 21 sessions x \$750= \$15,750 minus the \$750 deposit previously paid by Claimant = \$15,000.

### OTHER ISSUES

A prehearing telephone conference was held on January 8, 1991, and hearing sessions were held on February 5, 6, and 7, 1991 before a different panel. Subsequently, one arbitrator removed from the panel after Respondents. Accordingly, a new hearing began again on July 1991. The other two arbitrators were appointed by the NASD and

#### Name

Mario Barsotti  
Kathryn Toronto  
Anne Hennegar

#### Industry

Industry

Concurring Arbitrators

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Mario Barsotti

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Kathryn Toronto

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*Anne Hennegar*  
Anne Hennegar

Date of Decision: 12/1/91