

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Michael Jacobson

Name of Respondent(s)

PaineWebber, Inc.
Lawrence Wielgus

Case Number 90-00520

Heard before the members of the Arbitration Panel:

Robert Herschmann, Esq.
John Darling
Judy Avey

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CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on February 2, 1990. Claimant, Michael Jacobson ("Jacobson"), alleged that Respondent, Lawrence Wielgus ("Wielgus"), as authorized agent and employee of Respondent, PaineWebber, Inc., ("PaineWebber"), made misrepresentations of and omitted to state material facts regarding equity securities in order to induce Claimant to purchase options in those securities; that Respondents' actions constituted gross negligence, fraud, negligent misrepresentation, breach of fiduciary duty and violation of Section 517.301, Florida Statutes; and that Respondents' actions caused a loss to Claimant.

In a Statement of Answer filed with the NASD on May 7, 1990, Respondents denied all allegations of wrongdoing and alleged that Claimant was a wealthy investor with a primary investment objective of speculation; and, that Claimant made his own investment decisions. Respondents alleged the affirmative defenses of failure to mitigate damages; failure to use due diligence; losses caused by Claimant; no proximate cause; statements and omissions did not relate to material facts; no reliance; bar by unclean hands and comparative negligence; and, that Respondents acted in good faith.

RELIEF REQUESTED

Claimants requested damages in the amount of \$146,315.02, interest, punitive damages, costs and attorney's fees.

Respondents requested dismissal and costs.

AWARD

On February 22, 1991, in Fort Lauderdale, Florida, during a hearing lasting two (2) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant, Jacobson, on February 16, 1990, and signed by Patricia E. Cowart on behalf of Respondent, PaineWebber, on May 2, 1990, and by Wielgus on April 30, 1990.

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. 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 originals remain on file with the NASD.
2. Respondents, PaineWebber and Wielgus, are found liable, jointly and severally, and shall pay to the Claimant the amount of \$20,206.60, plus interest at the legal rate of 12% per annum from July 20, 1989 to date in the amount of \$3,839.25 for a total due to the Claimant of \$24,045.85.
3. Claimant's requests for punitive damages and attorney's fees are denied.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$1,800.00 (two sessions x \$750.00 with three arbitrators and one session x \$300.00 with one arbitrator). Claimant is hereby assessed \$900.00 for which the NASD, Inc. shall retain the \$550.00 previously deposited in partial satisfaction thereof. The NASD, Inc. shall retain the \$200.00 non-refundable filing fee. Respondents are hereby assessed \$900.00, jointly and severally, payable to the National Association of Securities Dealers, Inc.

2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

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

OTHER ISSUES

During the hearing of this matter, Claimant withdrew his claims for negligent supervision and Florida RICO.

Concurring Arbitrators

Robert Herschmann, Esq., John Darling and Judy Avey.

Date of Decision: March 04, 1991