

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)  
Philip J. Poirer

90-00535

Name of Respondent(s)  
PaineWebber, Inc.  
William "Jeff" Austin

Heard before:

Name

Joseph J. Aron  
Ronald L. Cameron  
Larry Maize

Public/Industry

Public  
Public  
Industry

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on February 20, 1990. Claimant alleged 1) misrepresentations and omissions of material facts in securities transactions, 2) joint and several liability of management principals, 3) breach of fiduciary duty, and 4) constructive fraud. Said allegations were made in connection with the purchase by decedent Armand Poirier of a security known as a limited partnership interest in Paine Webber Equity Partners II. Respondents denied that they wrongfully and unlawfully induced decedent to purchase Equity Partners II, and denied that any misrepresentations or omissions of material fact were made to him. By contrast, Respondents alleged that decedent was fully informed of the nature of and risks involved in the investment. Respondents also denied that they wrongfully and unlawfully induced decedent to sell mutual funds and denied that any misrepresentations or omissions of material fact were made regarding the sale of the mutual funds. Respondents denied that they intended to or did cause injury to decedent, denied that Claimant has been injured in the sum or sums alleged or in any sum or all, and denied that they are liable to Claimant in the manner alleged or at all. Respondents asserted five affirmative defenses.

RELIEF REQUESTED

Claimant requested the following: 1. Damages resulting from the liquidation of decedent's mutual funds in the amount equal to the difference between (a) the value of the securities at the time of the filing of the claim herein, plus the amount of any income which would have been earned on the securities; and (b) the price at which the securities were sold, plus interest at the legal rate from the date of sale; 2) Damages resulting from the purchase of the Equity Partners II Security in the amount equal to the difference between: (a) the price at which the security was bought plus interest at the legal rate from the date of purchase; and (b) the value of the securities at the time they were disposed of by the estate;

3) Damages equal to the broker's commission paid to respondents as a result of the above transactions; 4) On the second, third and fourth claims (a) for compensatory damages according to proof, (b) prejudgment interest on all sums found due and owing claimant; (c) punitive damages according to proof; and 5) Costs of arbitration incurred, including attorney's fees; and, 6) Such other and further relief as the arbitrators may deem proper. Respondents prayed that Claimant take nothing and be afforded no relief, that Respondents recover their costs and expenses, including reasonable attorney's fees, incurred herein, and that Respondents be afforded all further relief deemed just and proper.

AWARD

On April 23, 1991 in Los Angeles, California during a hearing lasting two sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on February 5, 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. Each and every claim of Claimant is dismissed.
2. The parties shall each bear their respective costs including attorneys' fees.

FORUM FEES

In accordance with Section 43c of the NASD Code of Arbitration Procedure, the NASD shall refund the \$400 filing fee previously deposited by the Claimant.

Concurring Arbitrators Signatures

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Larry Maize  
Larry Maize

Date of Decision: \_\_\_\_\_