

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of  
Securities Dealers, Inc.  
One East Broward Boulevard  
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Ft. Lauderdale, Florida 33301  
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In the Matter of the Arbitration BetweenName of Claimant(s)

Angelo J. and Roda Piciullo

90-01381

Name of Respondent(s)

PaineWebber, Inc.  
Jeffrey H. Rosa

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Heard before the Arbitrator:

Michael R. Casey, Esq.

Public

## CASE SUMMARY

This claim was filed with the National Association of Securities, Inc. (NASD) on May 14, 1990. The hearing was conducted in Fort Lauderdale, Florida on December 27, 1990 and February 22, 1991, with a total of four (4) sessions.

Claimants, Angelo J. and Roda Piciullo (Piciullos), alleged that Mr. Piciullo was semi-retired and soon to fully retire; Mrs. Piciullo was a homemaker; both were unsophisticated investors with objectives of safety of principal and income; that their investment experience had been limited to certificates of deposit; that their resources were limited and irreplaceable; that Respondents, PaineWebber, Inc. (PW) and Jeffery Rosa (Rosa), made misrepresentations of and omitted to state material facts; recommended unsuitable securities (option income fund); that Respondents' actions constituted violation of Section 517.301, Florida Statutes; fraud; negligent misrepresentation; and, breach of fiduciary duty.

In a Statement of Answer filed on July 6, 1990 by PW and on July 31, 1990 by Rosa, Respondents denied all allegations of wrongdoing. PW alleged that all risks were fully disclosed; that the complained of transaction was one of several that resulted from the ongoing relationship between Rosa and the Claimants; that the fund was a suitable investment; that the losses were the result of the market crash and Claimants' failure to mitigate their damages. PW alleged the affirmative defenses of comparative negligence; waiver, estoppel and/or failure to mitigate; assumption of risk; authorization and ratification; failure to exercise due diligence; and, no causation.

### RELIEF REQUESTED

Claimants requested damages in the amount of \$17,150.68, interest from date of purchase, punitive damages in the amount of \$51,452.04, costs, and attorney's fees.

Respondents requested dismissal. Rosa requested costs and fees.

### AWARD

On December 27, 1990 and February 22, 1991, the arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on April 26, 1990, by Respondent, PW, on July 16, 1990, and by Rosa, on June 19, 1990. The arbitrator, 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, PW and Rosa, are found liable, jointly and severally, and shall pay to the Claimants the amount of \$25,933.22, inclusive of interest to the date of the Award.
2. Claimants' requests for costs and punitive damages are denied.
3. Respondent, Rosa's, requests for costs and fees are denied.

### FORUM FEES

1. Pursuant to Section 43 of the Code of Arbitration Procedure, the Arbitrator has assessed forum fees in the amount of \$1,200.00 (four sessions x \$300.00). Respondents, PW and Rosa, are hereby assessed \$1,200.00, jointly and severally, \$300.00 of which shall be paid directly to the Claimants, and \$900.00 of which shall be paid 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, exclusive of attorneys' fees.

### OTHER ISSUES

The Claimants withdrew their request for attorney's fees before the arbitrator with the expressed intention of pursuing them in court.

### ARBITRATORS CONCURRING

  
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Michael R. Casey, Esq.

Date of Decision: March 25, 1991