

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

C. Kenneth Carlson by David Carlson,

90-02832

Name of Respondent(s)

PaineWebber, Inc.

Matthew Yonally

REPRESENTATION

For Claimant: Andrew J. Kinstler, Esq., of Helsell, Fetterman, Martin, Todd and Hokanson

For Respondents: Judy Louie, Esq. of PaineWebber, Inc.

CASE INFORMATION

Statement of Claim filed: October 11, 1990

Claimant's Submission Agreement signed on: January 24, 1991

Statement of Answer filed by Respondents on: May 9, 1991

Respondent PaineWebber's Submission Agreement signed on: May 9, 1991

Respondent Matthew Yonally's Submission Agreement signed on: April 19, 1991

HEARING INFORMATION

Pre-Hearing Conference(s) : November 5, 1991 / one session

Hearing Date(s)/Session(s): November 7, 1991 / three sessions

Hearing Location: Los Angeles, California

CASE SUMMARY

Claimant alleged common law breach of fiduciary duty, common law fraud or misrepresentation, violations of California Corporate Securities Law of 1986 and violations of 1934 Securities Exchange Act. The investments at issue included PaineWebber R&D Partners II Limited Partnership, Geodyne Energy Income Partnership II-D, PaineWebber Master Energy Utility Fund, a Capitol Life Insurance policy, and a real estate based annuity.

Respondents denied each and every allegation of the Statement of Claim and denied that Claimant is entitled to any relief whatsoever from Respondents. Respondents asserted twenty affirmative defenses.

RELIEF REQUESTED

Claimant requested 1) damages in an amount to be proven at trial or arbitration; 2) rescission of commissions, fees, or other compensation received by defendants; 3) attorney fees and costs; and 4) punitive damages as allowed under California law.

Respondents requested that the Claim be dismissed with prejudice, with costs to be taxed against Claimant, including reasonable attorneys' fees incurred by Respondents.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may 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.

AWARD

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

1. Each and every claim of Claimant against Respondents is denied.
2. Claimant's claim for attorneys' fees is denied.
3. Claimant's claim for punitive damages is denied.
4. The parties shall each bear their own costs and fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, Claimant is assessed a nonrefundable filing fee of \$100 and the NASD shall retain the \$400 hearing session deposit previously paid by the Claimant. In addition, Claimant is assessed forum fees in the sum of \$350 and Respondent is assessed forum fees in the amount of \$750. Forum fees were calculated as follows: One prehearing conference x \$300 plus three hearing sessions x \$400 hearing session deposit = \$1500 minus the \$400 previously paid by the Claimant = \$1100.

ARBITRATION PANEL

Name  
Edward Gelfand

Public/Industry  
Public Chair

Concurring Arbitrators' Signatures

  
Edward Gelfand

Date of Decision: 12/13/91

Served Dec. 17, 1991

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