

N.A.S.D. AWARD -

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Scott W. and Salome Z. Johnson

90-02914

Name of Respondent(s)

PaineWebber, Inc.
James Grotz

REPRESENTATION OF PARTIES

Claimants Scott W. and Salome Z. Johnson were represented by Gregory L. Wilmes, Esq. of Briol & Wilmes, Minneapolis, Minnesota.

Respondents PaineWebber, Inc. and James Grotz were represented by Edward G. Werner, Esq. and PaineWebber, Inc., Weehawken, New Jersey.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about October 18, 1990, Claimants Scott and Salome Johnson ("Johnson") alleged that they were induced, fraudulently and by improper marketing tactics, to purchase for their individual retirement accounts approximately \$8000 in Series B Zero Coupon Bonds (junk bonds) issued by Greater Southwestern Funding Corporation. Through Respondent PaineWebber, Inc. and its broker, Respondent James Grotz ("Respondents"), these junk bonds were marketed as safe and secure, similar to risk-free United States government backed securities.

Johnson further alleged that these bonds were, in fact, highly risky and inappropriate for the Johnson's investment objectives for their retirement accounts. Johnson alleged that the bonds are now worthless, and now do not trade at all or trade at a nominal price.

The Johnson's alleged the following violations: 1) Section 10(b) and 10b(5) of the federal securities law; 2) Minnesota Statute Section 80A.01 and 80A.03; 3) Breach of Fiduciary Duty; 4) Common Law Fraud; 5) Negligent Misrepresentation; 6) Negligent Supervision; and, 7) Act.III, Section 1, NASD Rules of Fair Practice.

In a joint Statement of Answer filed with the NASD on or about January 16, 1991, PaineWebber, Inc. and James Grotz ("Respondents") denied the allegations set forth in the Statement of Claim and denied any liability on the nine counts included in the claim.

More specifically, Respondents denied ever representing that the bonds were a conservative investment, and, furthermore, asserted that the front page of the prospectus indicated that the bonds were not as secure as government-backed investments.

RELIEF REQUESTED

Claimants requested actual damages in the amount of Eight Thousand Three Hundred Thirty Seven Dollars and Ninety Six Cents (\$8,337.96) plus interest, punitive damages in the amount of Eight Thousand Three Hundred Thirty Seven Dollars and Ninety Six Cents (\$8,337.96), treble damages in the amount of Twenty Five Thousand Thirteen Hundred Dollars and Eighty Eight Cents (\$25,013.88), additional punitive damages pursuant to Minnesota Statute Section 549.20, reasonable attorney's fees pursuant to Minnesota Statute Section 80A.23 and 609.53(4), costs, disbursements, expenses and other relief deemed just and equitable.

Respondents requested that the case be dismissed in its entirety and that reasonable costs be assessed against Claimants.

OTHER ISSUES

A Pre-Hearing Conference with the Panel was held on August 26, 1991 to discuss the document requests.

PROCEDURAL MATTERS

On September 11, 1991 in Minneapolis, Minnesota during a hearing lasting a total of two (2) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on October 10, 1990 by Claimants Scott W. Johnson and Salome Z. Johnson and on January 22, 1991 by Romaine L. Gardner on behalf of Respondents PaineWebber, Inc. and James Grotz.

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

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. The claims against Respondents Painewebber, Inc. and James Grotz shall be and hereby are dismissed in their entirety;
2. Each party shall bear their own costs and expenses other than those specifically enumerated herein;
3. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the claim filing fee in the amount of \$120.00 and the hearing session deposit in the amount of \$400.00 previously deposited with the NASD by the Claimants Scott W. and Salome Z. Johnson. Claimants shall be and are hereby liable and shall pay to the NASD additional forum fees in the amount of \$150.00. Respondents Painewebber Incorporated and James Grotz are jointly and severally liable for and shall pay to the NASD additional forum fees in the amount of \$550.00.

DATED:

Oct 15, 1991

William E. Mullin, Esq.
Presiding Chair
Public Arbitrator

Allan E. Fonfara
Allan E. Fonfara, CPA
Public Arbitrator

Bruce J. Nerland, Esq.
Industry Arbitrator

AWARD

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DATED:

10-15-91

William E. Mullin

William E. Mullin, Esq.
Presiding Chair
Public Arbitrator

Allan E. Fonfara, CPA
Public Arbitrator

Bruce J. Nerland, Esq.
Industry Arbitrator

NASD served 10/30/91

AWARD

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DATED:

William E. Mullin, Esq.
Presiding Chair
Public Arbitrator

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Industry Arbitrator

10/15/91

