



N.A.S.D. AWARD

Arbitration

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of  
Securities Dealers, Inc.  
NASD Financial Center  
33 Whitehall Street  
New York, N.Y. 10004  
FAX (212) 858-4389

In the Matter of the Arbitration Between

Name of Claimant

Jeannette Akers

vs.

Case #  
90-02919

Name of Respondents

PaineWebber, Inc.  
Sean Dillon

REPRESENTATION

For Claimant, Jeannette Akers ("Claimant"), Alan E. Liptkind, Esq. from the law firm of Lane & Altman.

For Respondents, PaineWebber, Inc. ("PaineWebber") and Sean Dillon ("Dillon"), Paul G. Thomas, Esq. from the firm of PaineWebber, Inc.

CASE INFORMATION

Statement of Claim was filed on October 18, 1990.  
Claimant's Submission Agreement was signed on October 11, 1990.

Joint Statement of Answer was filed by Respondents on March 7, 1991.  
PaineWebber's Submission Agreement was signed on March 4, 1991.  
Dillon did not execute a Submission Agreement.

HEARING INFORMATION

Pre-Hearing Conferences: January 23, 1992 - One session.

Hearing Dates/Hearing Sessions:

August 12, 1992	-	Two sessions
August 13, 1992	-	Two sessions.

Hearing Location: National Association of Securities Dealers, Inc.'s offices located at 260 Franklin Street, Boston, Massachusetts.

CASE SUMMARY

Claimant alleges that in or around February, 1989, Claimant opened accounts with PaineWebber and that Dillon called Claimant and informed her that he was

assigned to her accounts. Claimant alleges that she informed Dillon that she was an extremely conservative investor with very little market and/or trading experience and that the IBM stock with which she opened the account had been given to her by her grandparents and constituted the bulk of her nest egg.

Claimant further alleges that Dillon told her about a "special deal" for "special customers" involving securities of the Federal Savings Bank of Puerto Rico and that he subsequently purchased said securities for her account and failed to send her a prospectus. Claimant also alleges that Dillon recommended that she purchase shares in IGI, Inc. ("IGI") which he stated was of the highest and most stable quality. Claimant contends that this stock was highly speculative and unsuitable for her as she was an unsophisticated and conservative investor and that Dillon failed to disclose this fact. Claimant states that she did not receive a prospectus for IGI either. Claimant alleges that Dillon financed the massive purchases of IGI by utilizing her IBM stock as collateral for margin, in direct contravention of her instruction.

Claimant alleges that her account was churned to the extent that the volume of purchases equalled over 350% of the value of the account during the period of February, 1989 through December, 1989, exclusive of options trading.

Claimant also alleges that PaineWebber failed to appropriately supervise Dillon and that as a result, Claimant sustained trading losses in excess of \$100,000.00. Claimant states that Respondents' acts constituted violations of the Securities Act of 1933, the Securities Exchange Act of 1934, the Massachusetts Act, Massachusetts General Laws c.93A and N.A.S.D. suitability rules and that the acts constituted churning, fraud, negligence, breach of contract, breach of fiduciary duty and conversion.

Respondents deny the allegations contained in the Statement of Claim and submit that they are not liable to Claimant for her losses.

Respondents contend that Claimant's account was opened by Paul Fried in August, 1988. Respondent also contend that the account was then transferred to Dillon and that Claimant engaged in similar trading activity with both brokers. Respondents also contend that Claimant indicated that she was very experienced and was willing to speculate on her investment by placing her IBM stock on margin but that she did not want to sell her IBM stock.

Respondents deny that Dillon in informing Claimant about the Federal Savings Bank of Puerto Rico referred to it as a "special deal" for "special customers". Respondents state that Claimant made \$6,000 plus in profit from this investment. Respondents further state that the trading activity, including the purchase of IGI was consistent with Claimant's investment objectives. Respondents assert fourteen affirmative defenses.

**RELIEF REQUESTED**

Claimant requests an award of \$100,000.00, \$200,000.00 in punitive damages, interest, \$37,844.50 in attorney's fees, \$8,337.85 in expert fees, \$277.00 in expenses and \$750.00 in disbursements.

Respondents request that the Statement of Claim be denied in all respects and that costs of this proceeding be assessed against Claimant.

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 originals remain on file with the NASD.

Hearings in this matter were previously scheduled for November 6, and 7, 1991, January 30 and 31, 1992, March 30 and 31, 1992 and then June 11 and 12, 1992. Claimant requested two postponements: one in November and the other in January. The postponement fee of \$1,000.00 was waived for the November and assessed for the January postponement. Similarly, Respondents requested two postponements: the first in March and the second in June. The postponement fee of \$1,000.00 was waived for the March but assessed for the June postponement. Claimant paid \$750.00, a portion of the fee while Respondents paid \$1,000.00.

Prior to the commencement of the hearing, Claimant made a Motion in Limine to exclude testimony of Respondents' witnesses based upon the fact that Respondents failed to disclose the names of their witnesses ten days before the first scheduled hearing date in accordance with Section 32(c) of the NASD Code of Arbitration Procedure. Respondents objected and this Panel granted the Motion only to the extent that Scott Seidman and James Simcoe would be not be allowed to testify except as rebuttal witnesses.

AWARD

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

1. Respondents, PaineWebber, Inc. and Sean Dillon, are jointly and severally liable to Claimant and shall pay her **NINETY TWO THOUSAND SEVEN HUNDRED AND NINETY TWO DOLLARS AND NO CENTS (\$92,792)**. This award is with respect to the losses on the IGI, Inc. trades and includes margin interest attributable thereto and the commissions paid thereon;
2. The claim for punitive damages is denied;
3. The claim for attorney's fees is denied;

4. The claim for expert fees is denied;
5. The claims for expenses and disbursement are denied.

FORUM FEES


Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

1. Forum fees in the amount of \$4,300.00 for four hearing session at \$1,000.00 per session and one pre-hearing conference at \$300.00 per conference are assessed and shall be borne equally by Claimant and PaineWebber, Inc.;

2. Claimant is further assessed \$200.00 non-refundable filing fee; Claimant made a deposit of \$950.00. Therefore, the balance due the NASD is \$1,650.00 (including the \$250.00 due for the postponement fee);

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

Concurring Arbitrator's Signature

  
Edward P. Delaney  
Industry Panelist

Date of Decision: September 14, 1992

4. The claim for expert fees is denied;
5. The claims for expenses and disbursement are denied.

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Concurring Arbitrator's Signature

  
Leonard H. Golder, Esq.  
Public Panelist

Date of Decision: September 14, 1992

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FORUM FEES

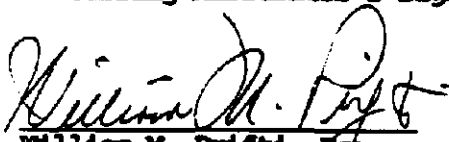
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Concurring Arbitrator's Signature

  
William M. Prifti, Esq.  
Chairperson/Public

Date of Decision: September 14, 1992