

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)

Name of Claimant(s))

John Hickman as Trustee for the John)

Hickman Revocable Living Trust)

Douglas T. Hickman)

Marguerite C. Hickman)

James Marsh)

Harry H. Harkins)

Name of Respondent(s))

PaineWebber, Inc.)

Christopher Hodges)

Case No. 90-03354

REPRESENTATION

For Claimants, John Hickman as Trustee for the John Hickman Revocable Living Trust ("John Hickman"), Douglas Hickman, Marguerite C. Hickman, James Marsh and Harry Harkins: Stuart Goldberg, Esq. of the Law Offices of Stuart C. Goldberg, P.A.

For Respondent, PaineWebber, Inc. ("PaineWebber"): Birgitta Siegel, Esq. of PaineWebber.

For Respondent, Christopher Hodges ("Hodges"): Terrance Bostic, Esq. of Bush Ross & Gardner.

CASE INFORMATION

Statement of Claim filed: November 27, 1990, and amended September 6, 1991. Claimants' Submission Agreements signed: by John Hickman on August 24, 1990, by Douglas and Marguerite Hickman on February 8, 1991, by James Marsh on February 1, 1991 and by Harry Harkins on February 4, 1991.

Respondent, PaineWebber's, Statement of Answer and Third Party Claim filed: September 5, 1991. Respondent, PaineWebber's, Submission Agreement signed: October 18, 1991 by Romaine Gardner on behalf of PaineWebber.

Respondent, Hodges, Submission Agreement signed: March 18, 1992.

Respondent, Hodges, did not file a Statement of Answer as required by Sections 8 and 25 of the Code. (See Other Issues).

OTHER ISSUES CONSIDERED & DECIDED

1. The Panel finds that Third Party Respondent, Hodges, was required to file an Answer pursuant to Sections 8 and 25 of the NASD Code of Arbitration Procedure, Hodges being a person associated with an NASD member firm at the time the facts giving rise to the controversy occurred.
2. Pursuant to the agreement between PaineWebber and Hodges, Respondent/Third Party Claimant, PaineWebber, dismissed without prejudice, its Third Party Claim against Hodges.
3. 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.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, and post-hearing submissions, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, PaineWebber, is found liable and shall pay to Claimant, John Hickman, the amount of \$122,068.17, inclusive of interest.
2. Respondent, PaineWebber, is found liable and shall pay to Claimants, Douglas and Marguerite Hickman, the amount of \$85,163.51, inclusive of interest.
3. Respondent, PaineWebber, is found liable and shall pay to Claimant, James Marsh, the amount of \$64,756.01, inclusive of interest.
4. Respondent, PaineWebber, is found liable and shall pay to Claimant, Harry Harkins, the amount of \$285,802.34, inclusive of interest.
5. Respondent, PaineWebber, is also found liable for punitive damages and shall pay to the Claimants the following further amounts:
 - a) \$366,204.51 to John Hickman,
 - b) \$255,490.53 to Douglas and Marguerite Hickman,
 - c) \$194,268.03 to James Marsh, and,
 - d) \$857,407.02 to Harry Harkins.

This Panel bases its authority to award punitive damages on the Federal Arbitration Act and the case law interpreting that Act. This Panel finds that Hodges committed an egregious breach of his fiduciary duty by self dealing and providing fictitious and inaccurate reports and that Respondent, PaineWebber, was grossly negligent in its failure to supervise Hodges in this course of conduct.

HEARING INFORMATION

On March 16, 17, 18, 19 and 20, 1992, in Tampa, Florida, hearings lasting 10 sessions were conducted.

CASE SUMMARY

Claimant alleged that PaineWebber was liable for violation of 10(b) and Rule 10b-5 of the Securities Exchange Act, recommending unsuitable securities, common law fraud, negligence, breach of contract, violation of Federal RICO Act, and violation of the Florida Civil Theft Law. Claimant alleged that Hodges made unauthorized purchases of Syntech stock; provided false and fraudulent reports to Claimants; and, made various misrepresentations regarding the stock including: omitting to inform Claimants that the stock was thinly traded, omitting to inform Claimants that Hodges held a position in the Stock and omitting to inform Claimants that Hodges manipulated the market in the stock.

Respondent, PaineWebber, denied all allegations of wrongdoing and alleged that Claimants received monthly statements and confirmations and failed to complain to Respondent, PaineWebber; PaineWebber did not authorize and was not aware of any fraud being committed; PaineWebber revised eleven of the transactions in John Hickman's account; and, Hodges's sole mistake was in over concentrating his clients in this one particular security.

Respondents alleged the affirmative defenses of estoppel, contributory negligence, good faith, reasonable supervision and collateral estoppel as to the claims of fraud, RICO, attorney's fees and punitive damages.

Respondent, PaineWebber, filed a Third Party Claim against Hodges for indemnification.

Third Party Respondent, Hodges, failed to file an Answer but appeared at the hearing to defend and executed a Submission Agreement on the third day of hearing.

RELIEF REQUESTED

Claimants requested damages in the amounts of \$91,551.13, for John Hickman, \$25,284.45, for Douglas Hickman, \$15,896.52, for Marguerite Hickman, \$22, 691.66, for both Douglas and Marguerite Hickman's joint account, \$88,098.10, for James Marsh and \$148,760.83, for Harry Harking plus interest, punitive damages, attorney's fees, and treble damages under Florida's Civil Theft Statute and treble damages under the Federal RICO Act.

Respondent, PaineWebber, requested dismissal of the claim and Third Party claimed against Hodges for indemnification.

Third Party Respondent, Hodges, failed to file an Answer.

6. Claimants' request for attorney's fees is denied.

7. This Panel bases the above Award on its findings of common law fraud and negligence. All other requests for relief under the remaining allegations were not sustained by the evidence.

OTHER COSTS

1. Respondent, PaineWebber, is also found liable and shall pay to all Claimants the total amount of \$20,867.66, for expert witness, copying and other costs.

2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$10,000.00 (ten sessions x \$1,000.00 per session).

2. Respondent, PaineWebber, is hereby assessed \$10,000.00, \$1,000.00 of which shall be paid directly to the Claimants, and \$9,000.00, of which shall be paid to the National Association of Securities Dealers, Inc.

3. The NASD shall retain the non-refundable filing fees of \$250.00 paid by the Claimants and \$500.00 paid by the Respondent/Third Party Claimant.

4. The NASD shall retain the session deposit of \$1,000.00, paid by PaineWebber in partial satisfaction of such fees.

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

Concurring Arbitrators' Signatures

/s/
Herbert L. Blum

Public

/s/
Harold C. Anders

Industry

/s/
Edward J. Adrian

Public

Date of Decision: September 9, 1992