

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Joyce Alfino

and

91-00644

Name of Respondents

PaineWebber, Inc.,  
Harvey L'Hommedieu and Melinda Abood

REPRESENTATION OF PARTIES

Claimant was represented by John S. Lutz, Esq. of Kelly, Stansfield & O'Donnell, Denver, Colorado.

Respondents PaineWebber, Inc., Harvey L'Hommedieu and Melinda Abood were represented by Paul G. Thomas, Esq. of PaineWebber, Inc., Weehauken, New Jersey.

CASE INFORMATION

The Statement of Claim was filed on or about February 27, 1991. Claimant's Submission Agreement was signed on February 19, 1991.

Statement of Answer was filed by Respondents PaineWebber, Inc., Harvey L'Hommedieu and Melinda Abood on or about May 13, 1991. Respondent PaineWebber, Inc.'s Submission Agreement was signed on May 10, 1991 by Joseph Generelli, Esq. Respondent Harvey L'Hommedieu's Submission Agreement was signed on May 8, 1991. Respondent Melinda Abood's Submission Agreement was signed on May 7, 1991.

HEARING INFORMATION

The hearing was held on Tuesday, December 15, 1992 for two (2) sessions, and Wednesday, December 16, 1992 for two (2) sessions in Denver, Colorado for a total of four (4) sessions.

CASE SUMMARY

Claimant alleged that Respondents PaineWebber, Inc., Harvey L'Hommedieu and Melinda Abood ("Respondents") breached their fiduciary duty, misrepresented material facts and failed to adhere to the standard of care in the exercise of their duties in handling the account. Claimant specifically alleged that the option trading in the account was unsuitable for her in light of her financial

objectives and that Respondents engaged in excessive trading. It was also alleged that Respondent Abood misrepresented that option trading would be good for the claimant and misrepresented information on her Client Option Agreement and Qualification Form. Claimant further alleged that the short sale of Blockbuster Video, the purchase of Circle K Corporation and the failure to sell Resorts International bonds constituted a breach of fiduciary duty and a failure to adhere to the responsibilities inherent in the standard of care in handling her account.

Respondents denied the allegations contained in the Statement of Claim. Respondents specifically stated that the Claimant was an experienced and sophisticated investor with a history of trading in stocks, bonds and options. Respondents also stated that the claimant authorized each and every trade in her account and was at times in daily contact with Respondent Abood and other PaineWebber employees. It was further stated by the Respondents that the claimants investment objectives were adhered to and that there was no breach of fiduciary duty. The allegations that Respondent L'Hommedieu acted improperly were specifically denied. Respondents asserted the following affirmative defenses: estoppel, ratification, laches, the claims are barred by the applicable statutes of limitation, the Statement of Claim fails to state a claim upon which relief may be granted, contributory negligence, failure to mitigate, assumption of the risk, PaineWebber maintained an adequate and reasonable system of supervision and control over its employees, and at all times acted in good faith and did not at any time induce any acts constituting a cause of action.

#### RELIEF REQUESTED

Claimant requested an award in the amount of \$117,134.04 jointly and severally from the Respondents plus punitive damages as determined by the arbitration panel.

Respondents requested that the claims be dismissed in their entirety, that the costs of the proceedings, including reasonable attorney's fees be assessed against the claimant and for such other and further relief as the panel may deem just and proper.

#### OTHER ISSUES CONSIDERED & 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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents PaineWebber, Inc., Harvey L'Hommedieu and Melinda Abood shall be and hereby are jointly and severally liable for and shall pay to the Claimant Joyce Alfino the sum of \$91,431.00 (ninety one thousand four hundred thirty one dollars) which sum includes interest as prescribed by Colorado law.
2. Respondents PaineWebber, Inc., Harvey L'Hommedieu and Melinda Abood shall be and hereby are jointly and severally liable for and shall pay to the Claimant the sum of \$32,040.57 (thirty two thousand forty dollars and fifty seven cents) as attorney's fees and costs. In awarding attorneys fees and costs the panel has considered the authority of the Colorado Securities Act.
3. Except as specifically enumerated herein, each party shall bear its own costs, expenses and fees incurred in this matter.


FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$200.00 and shall retain as forum fees, the hearing session deposit in the amount of \$750.00 previously deposited with the NASD by the Claimant. Respondents PaineWebber, Inc., Harvey L'Hommedieu and Melinda Abood shall be and hereby are jointly and severally liable for and shall pay to the NASD the sum of \$2,250.00 as additional forum fees.

Forum fees are calculated at the rate of \$750.00 per hearing session and \$300.00 for each prehearing conference, if any.

The NASD shall retain postponement fees in the amount of \$750.00 previously deposited with the NASD by Respondent PaineWebber, Inc. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

  
Steven Meyrich, Esq.  
Presiding Chair  
Public Arbitrator

12-22-92

Award 91-00644  
Page 4 of 4

Dennis R. Frohlich, Esq.  
Public Arbitrator

William A. Conklin  
Industry Arbitrator

12-23-92

Award 91-00644  
Page 4 of 4

Dennis R. Frohlich  
Dennis R. Frohlich, Esq.  
Public Arbitrator

January 4, 1993

William A. Conklin  
Industry Arbitrator