

NASD

Arbitration

N.A.S.D. AWARD

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 Claimants

Daniel Adler
Daniel Lee Industries Inc.
Daniel Lee Apparel Inc. Qualified Retire
Daniel Lee Industries Inc. Special Accou
Daniel Adler C/F Evan Matthew Adler

vs.

Case #
91-00987

Name of Respondents

PaineWebber, Inc.
Barry Fishkind

REPRESENTATION

For Claimants, Daniel Adler, Daniel Lee Industries, Inc., Daniel Lee Apparel, Inc. Qualified Retirement Plan & Trust, Daniel Lee Industries, Inc. Special Account, Daniel Adler as Custodian for Evan Matthew Adler: William J. Davis, Esq. of Scheichat & Davis, P.C.

For Respondent, PaineWebber, Inc: Joseph F. Generelli, Esq., in-house counsel.

For Respondent, Barry Fishkind: Richard M. Neville, Esq., of Weber, Neville & Shaver.

CASE INFORMATION

Statement of Claim filed: March 28, 1991.

Claimants' Submission Agreement signed on: March 4, 1991.

PaineWebber, Inc.'s Statement of Answer to Claim and Cross Claim filed on: June 24, 1991.

Respondent's Submission Agreement signed on: June 21, 1992.

Barry Fishkind's Statement of Answer and Cross Claim filed on: June 5, 1991.

Respondent's Submission Agreement signed on: May 22, 1991.

HEARING INFORMATION

Pre-hearing Conference Dates/Sessions with Howard S. Eilen, Esq.:

November 14, 1991 - One session
February 3, 1992 - One session.

Hearing Date/Hearing Sessions: February 28, 1992 - Two sessions
March 25, 1992 - Two sessions
March 26, 1992 - Two sessions
April 15, 1992 - One session.

Hearing Location: New York, New York.

CASE SUMMARY

Claimants commenced this proceeding in order to recover damages as a result of trading losses, lost profits, improper charges of margin interest and improper charges of commissions, all of which arose out of various acts of fraud, deceit on the Claimants by Barry Fishkind during the course of his employment with PaineWebber, Inc. Claimant further alleges that Mr. Fishkind failed to follow Claimants' expressed investment objectives and restrictions. Claimant alleges that Barry Fishkind forged the signatures on Claimants' customer agreements and without authorization, establish margin accounts for Claimants. Claimants allege that Barry Fishkind conducted unauthorized trading in their accounts, churned the accounts to generate commissions notwithstanding the fact that the investments were inappropriate for Claimants. Claimants further allege that the fraud was ongoing and that PaineWebber, Inc. failed to supervise Barry Fishkind.

Claimants allege that they advise Barry Fishkind that they wanted to invest in secure and conservative instruments, which would produce income, have a high degree of safety of principal and a low degree of market risk.

Claimants further allege that they had limited investment experience and that the confirmations and monthly statements received from PaineWebber, Inc. were difficult to understand and that Mr. Fishkind's explanation were unsatisfactory. Claimants also allege that it was not until a work-up of the accounts was undertaken by their accountant did they become aware of losses and improper commission charges. Claimants also allege that Mr. Fishkind imprudently, negligently and recklessly instituted trading practices which resulted in losses to the accounts. Claimants further allege that Barry Fishkind promised them earnings of approximately 9% per annum.

Respondent, Barry Fishkind, denies liability and denies each and every allegation of wrongdoing set forth in the Statement of Claim. Respondent contends that David Adler was a long term stock market investor with considerable knowledge and experience in the purchase and sale of securities. Respondent further contends that any losses incurred by Claimants resulted from his own trading practices and market fluctuation. Respondent denies the allegation of forgery and contends that any signature on any account form is either David Adler's or that of someone he authorized to sign on his behalf.

Respondent also contends that if any award is obtained by the Claimants against him, he is entitled to be indemnified by PaineWebber, Inc.

Respondent, PaineWebber, Inc., denies liability and denies the allegations of wrongdoing. Respondent argues that David Adler was an experienced and sophisticated investor. Respondent contends that the confirmations and monthly statements sent to Claimants prominently displayed the trading activities in the accounts.

Respondent, PaineWebber, Inc., contends that the trades were suitable and that they were not excessive. Respondent contends that it was Claimants' own trading propensities that allowed the trades in the account to occur.

Respondent, PaineWebber, Inc., denies any responsibility to indemnify Barry Fishkind for any award that may be rendered against him.

RELIEF REQUESTED

Claimants request an award of compensatory damages consisting of their net trading losses, interest at the legal rate of nine percent (9%) per annum from the date of each loss, improper commission charges from Claimants' accounts by PaineWebber plus interest at the legal rate of nine percent (9%) per annum from the date of each commission, all margin interest and other margin charges, amounting to \$233,610.31, together with costs and reasonable attorney's fees and punitive damages against Respondents, jointly and severally.

Respondent, Barry Fishkind, requests that the Statement of Claim be dismissed. Barry Fishkind further requests a judgment over and against PaineWebber in the event that Claimants recover an award against him. Respondent also request an award of costs and legal fees and other relief deemed reasonable and just.

Respondent, PaineWebber, Inc., requests that the Statement of Claim be dismissed in its entirety with costs assessed against Claimants.

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 received 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, the undersigned arbitrator has decided in full and final

resolution of the issues submitted for determination as follows:

1. Respondents, PaineWebber, Inc. and Barry Fishkind, are hereby jointly and severally liable to Claimants and shall pay Claimants ~~ONE HUNDRED AND TWENTY EIGHT THOUSAND AND EIGHTEEN DOLLARS AND SIXTY FOUR CENTS~~ (\$128,018.64);
2. The claim for punitive damages is denied;
3. The Cross Claim asserted by Barry Fishkind against PaineWebber, Inc. for indemnification is denied;
4. All claims for attorneys' fees is 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 \$5,250.00 for seven hearing session at \$750.00 per sessions are assessed and shall be borne in three equal parts by Claimants, PaineWebber, Inc. and Barry Fishkind;
2. Forum fees in the amount of \$600.00 for two pre-hearing conferences at \$300.00 per conference are assessed and shall be borne by the Claimants;
3. Claimants are further assessed \$200.00 non-refundable filing fee;
4. Claimants deposited \$950.00 with the NASD and shall receive a credit against the amount assessed against them.

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

Concurring Arbitrator's Signature
Name


James E. Howard
Industry Arbitrator

Date of Decision: May 18, 1992

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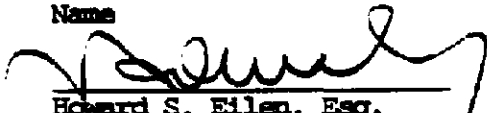
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Howard S. Ellen, Esq.
Chairperson - Public Arbitrator

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Name

Jay B. Baron

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Public Arbitrator

Date of Decision: May 18, 1992