

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Daniel F. Greeley

91-01043

Name of Respondents

PaineWebber, Inc.
James Grotz

REPRESENTATION

For Claimant and Respondent James Grotz: Mark Briol, Esq. and Gregory Wilmes, Esq. of Briol & Wilmes, Minneapolis, Minnesota.

For Respondent PaineWebber, Inc.: Joseph F. Generelli, Esq. of PaineWebber, Inc., Weehawken, New Jersey.

Respondents PaineWebber, Inc. and James Grotz were originally represented by Edward Warner, Esq. of PaineWebber, Inc. Weehawken, New Jersey.

CASE INFORMATION

Statement of Claim filed: April 2, 1991.

Amended Statement of Claim filed: April 29, 1992.

Claimant's Submission Agreement signed on: March 15, 1991.

Joint Statement of Answer filed by Respondents on: May 28, 1991.

Joint Amended Statement of Answer filed by Respondents on: October 21, 1991.

Joint Second Amended Statement of Answer filed by Respondents on: November 20, 1991.

Respondent, James Grotz's Submission Agreement signed on: July 3, 1991.

Conditional Cross Claim filed by Respondent PaineWebber, Inc. on: December 6, 1991.

Answer to the Conditional Cross Claim filed by Respondent James Grotz on: December 20, 1991.

HEARING INFORMATION

Pre-Hearing Conference: November 27, 1991 for one (1) session with Chairman,
December 17, 1991 for one (1) session with Chairman.

Hearing Dates/Sessions: July 8, 1992 for two (2) sessions,
July 9, 1992 for one (1) session.

Hearing Location: Minneapolis, Minnesota.

CASE SUMMARY

Claimant Daniel Greeley ("Greeley") alleged that Respondent PaineWebber, Inc. ("PaineWebber") and Respondent James Grotz ("Grotz") through fraudulent and improper marketing tactics, induced Greeley to purchase for his retirement account, junk bonds, more specifically, Series B Greater Southwestern bonds, issued by Greater Southwestern Funding Corporation. Greeley further alleged that PaineWebber marketed these bonds as fully collateralized, highly safe, secure investments appropriate for retirement accounts, when, in fact, they were not highly secure, safe and appropriate for retirement accounts. Greeley further alleged that Grotz made representations concerning the safety and suitability of the bonds, but Greeley alleged it is not known whether PaineWebber had deceived Grotz as well as Greeley, or whether Grotz knew the real risks.

Respondents PaineWebber, Inc. and Grotz generally denied each and every allegation contained in the Statement of Claim. PaineWebber and Grotz alleged that Grotz did not represent the bonds as "highly safe, secure investments." PaineWebber and Grotz further alleged that Greeley was a sophisticated investor, and that he knew by the relatively high rate of return that the bonds were scheduled to pay, that they were not as safe and secure as other zero coupon bonds.

Claimant Daniel Greeley Amended his Statement of Claim to include a count for violation of RICO. Greeley alleged that Grotz would testify that he, personally, as well as Greeley, was also defrauded by PaineWebber. Greeley further alleged that the threats and intimidation of a witness, Mr. Grotz, by PaineWebber's in-house attorney are a part of the basis for the RICO claim.

Respondents PaineWebber and James Grotz's Amended Answer contained the same allegations as set forth in their Answer. PaineWebber and Grotz's Second Amended Answer alleged that arbitrators in a prior arbitration against PaineWebber and Grotz, involving the same allegations as the Greeley arbitration, dismissed the Claimant's claims in their entirety.

Respondent PaineWebber, in its conditional cross claim, alleged that if found to be liable, that Grotz be held liable for any such decision. Respondent Grotz, in his Answer to Respondent PaineWebber's conditional cross claim, denied any liability to PaineWebber. Grotz asked that the panel dismiss PaineWebber's cross claim.

Respondent Grotz filed a cross claim for attorney's fees in the amount of \$2892.00 and for costs in the amount of \$106.17.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$21,584.97 plus interest through the date of the hearing, attorney's fees under Minn. Stat. Section 80A.23 and 609.53 subd.4, punitive damages under Minn. Stat. Section 332.51 in the amount of \$21,584.97, treble damages under the treble damage theft statute, Minn. Stat. Section 609.53, subd. 4 in the amount of \$64,754.91, an additional award of punitive damages in an amount resting with the discretion of the arbitrators, under Minn. Stat. Section 549.20, costs, disbursements and expenses and for such other relief as the arbitrators shall deem just and equitable. Claimant also requested a triple damage RICO award against PaineWebber plus costs and attorney's fees under RICO.

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

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 originals remain on file with the NASD.

Respondent PaineWebber, Inc. did not file with the NASD a properly executed submission to arbitration pursuant to Section 12 of the Code, but having answered the claim, appeared and testified at the hearing is bound by the determination of the panel on all issues submitted.

Claimant Daniel Greeley settled and voluntarily dismissed his claim against Respondent James Grotz pursuant to a Release and Settlement Agreement entered into between the said parties.

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. Respondent PaineWebber, Inc. shall be and hereby is liable for and shall pay to the Claimant Daniel F. Greeley, actual damages in the amount of Twenty One Thousand Five Hundred Eighty Four Dollars and Ninety Seven Cents (\$21,584.97);

2. Respondent PaineWebber, Inc. shall be and hereby is liable for and shall pay to the Claimant Daniel Greeley, interest on the above sum in the amount of Eleven Thousand Seven Hundred Ninety Nine Dollars and Eighty Cents (\$11,799.80);

3. Respondent PaineWebber, Inc. shall be and hereby is liable for and shall pay to the Claimant Daniel Greeley, attorney's fees in the amount of Eleven Thousand One Hundred Twenty Eight Dollars and Twenty Six Cents (\$11,128.26). The panel awarded attorney's fees pursuant to Minn. Stat. Section 80A.23;

Respondent PaineWebber, Inc.'s Cross Claim Against Respondent James Grotz

4. Respondent PaineWebber, Inc.'s Cross Claim is dismissed and denied in its entirety;

Respondent James Grotz's Cross Claim against Respondent PaineWebber, Inc.

5. Respondent PaineWebber, Inc. shall be and hereby is liable for and shall pay to the Respondent James Grotz damages in the amount of One Thousand Five Hundred Dollars and No Cents (\$1500).

FORUM FEES

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

3 sessions X \$500 = \$ 1500 minus hearing session deposit of \$500 =
net \$1000 due for hearing session fees,

Postponement fee in the amount of \$400 for the hearing originally
scheduled on December 4, 1991,

2 Pre-hearing Conference sessions x \$300 = net \$600 due for the
Pre-hearing conference sessions.

Total Fees owed to the NASD: \$2000.00 net due.

Forum fees are Assessed Against PaineWebber, Inc. in the amount of Two Thousand Dollars (\$2000.00). Respondent PaineWebber, Inc. shall also reimburse to the Claimant Daniel Greeley the amount of \$650 which represents

the filing fee and hearing session deposit previously deposited with the NASD.

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

By The Arbitration Panel:

Dated:

Jack Elmquist
Chairperson

July 17, 1992

Wendy A. Sacha
Public Arbitrator

July 21, 1992

John Marley Clarey
Industry Arbitrator

July 17, 1992

DATE AWARD SERVED BY THE NASD: July 22, 1992