

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Robert J. Rowley,
President of Robert J. Rowley & Co., Inc.,
and Trustee for the Robert J. Rowley & Co.
Defined Benefit Retirement Trust

91-01365

Name of Respondents

PaineWebber, Inc.
Timothy O. Cornell
Shaun P. Nicholson

REPRESENTATION

For Claimants: Mark E. Maddox, Esq. of Coons & Saint, Indianapolis, Indiana.

For Respondents: Patrick J. Rowley, Esq. of PaineWebber, Inc. Weehawken, New Jersey.

CASE INFORMATION

Statement of Claim filed on: May 1, 1991.

Claimant's Submission Agreement signed on: May 21, 1991.

Joint Statement of Answer filed by Respondents on: July 17, 1991.

Respondent PaineWebber, Inc.'s Submission Agreement signed on: July 15, 1991.

HEARING INFORMATION

Hearing Date/Sessions: April 28, 1992 for three (3) sessions.

Hearing Location: Indianapolis, Indiana.

CASE SUMMARY

Claimants, Robert J. Rowley, President of Robert J. Rowley & Co., Inc. and Trustee for the Robert J. Rowley & Co., Inc. Defined Benefit Retirement Trust ("Mr. Rowley") alleged that Respondent PaineWebber, Inc. ("PaineWebber") and its agents, Respondent Timothy Cornell ("Cornell") and Respondent Shaun Nicholson ("Nicholson") recommended that Mr. Rowley move

his Retirement Trust from the Bank One Fund-I to the First Mercantile Funds. Mr. Rowley alleged that the recommendation was unsuitable. Mr. Rowley further alleged that Cornell and Nicholson failed to provide Mr. Rowley with material information necessary to make an informed decision about whether the First Mercantile Funds met his investment objectives. Mr. Rowley alleged that the recommendation was completely inconsistent with his conservative investment objectives. Mr. Rowley alleged that PaineWebber failed to properly supervise Cornell and Nicholson.

Respondents PaineWebber, Cornell, and Nicholson ("Respondents") alleged that the claim is meritless and based on misstatements of fact and totally unsubstantiated allegations. Respondents alleged that they did not recommend that Mr. Rowley transfer his funds out of Bank One Fund. Respondents alleged that it was Mr. Rowley's decision to transfer his assets out of Bank One Fund into First Mercantile Fund. Respondents alleged that the claim must be dismissed due to a lack of privity of contract between Mr. Rowley and the Respondents because the Respondents had no relationship with First Mercantile Funds or Bank One, and also bore no responsibility for the transactions carried out while Mr. Rowley's funds were under First Mercantile and Bank One's care.

RELIEF REQUESTED

Claimants requested actual damages in the amount of \$28,967.00 in principal and \$30,083.00 in interest that would have been earned on its original principal, plus interest at the annual rate of ten percent (10%) per annum, attorney's fees and expenses, costs, and punitive damages in the amount of \$150,000.00, and for all other relief available to the Retirement Trust under applicable laws and regulations.

Respondents requested that the Statement of Claim be dismissed in its entirety and that all costs incurred in connection with the arbitration be charged 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.

Respondents Timothy O. Cornell and Shaun P. Nicholson 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, are bound by the determination of the panel on all issues submitted.

AWARD

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

1. The Statement of Claim is dismissed with prejudice and denied in its entirety;
2. Each of the parties shall bear their own costs and expenses incurred, including attorney's fees, other than those specifically enumerated for herein.

FORUM FEES

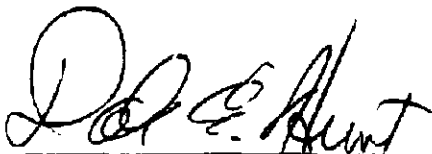
Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

3 sessions X \$750 = \$2250 minus hearing session deposit of \$750 = \$1500 due plus the adjournment fee for the hearing scheduled on March 17, 1992 and March 18, 1992 in the amount of \$750 = net \$2250 due.

Forum fees Assessed Against: Claimant Robert J. Rowley in the amount of \$1500 for the additional hearing sessions and against Respondent PaineWebber, Inc. for the adjournment fee in the amount of \$750.

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

By The Arbitration Panel:


Dale E. Hunt, Chairperson
Public Arbitrator

Dated:

July 28, 1992


Sharon B. Merriman
Public Arbitrator

Aug 3, 1992


Robert G. White
Industry Arbitrator

August 5, 1992

Date Award Served By The NASD: _____