

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :

Alston M. Smithers & Helen Smithers :

Claimants :

vs. :

PaineWebber, Inc. :

Arthur J. Herrera :

Respondents :

CASE #91-01407
AWARD

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on May 6, 1991, Claimants Alston & Helen Smithers through their counsel Thomas W. Donohue, Esq., Titus, Brueckner & Berry, Scottsdale, AZ, alleged that Respondents PaineWebber, Inc. and Arthur J. Herrera were negligent for concentrating all of the Claimant's savings into one security, the Criterion Fund, and that this investment was not suitable for the Claimants and did not meet their investment objective of no risk to principal. The Claimants further alleged that the Respondents misrepresented information, causing the Claimants to believe this investment was as safe as a C.D.

Respondents, PaineWebber, Inc. and Arthur J. Herrera through their counsel Scott Ratchick, maintained that they deny each and every cause of action and allegations of wrongdoing. Respondents further maintained that the investments the Respondents recommended were diversified funds (Criterion & Lord Abbott), offering the benefit of reduced risk by virtue of their diversified holdings and that the nature of the investments were explained to the Claimants and that the Claimants made the decision to invest in government backed securities such as the Criterion Fund. The Respondents assert that the fund has paid dividends at about 8%, which the Claimants have received.

RELIEF REQUESTED

Claimants, Alston & Helen Smithers requested \$10,000.00 in actual damages, \$3,000.00 in attorney's fees, costs and interest, as well as the return of the NASD filing fee.

Respondents, PaineWebber, Inc. and Arthur Herrera requested the claims of the Claimants be dismissed and that Respondents be awarded attorney's fees and costs.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, J. Noland Franz, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on May 1, 1991 and by the Respondent PaineWebber, Inc. on June 25, 1991 and not signed by Respondent Arthur Herrera as required by Section 12 & 13 of the NASD Code of Arbitration Procedure.

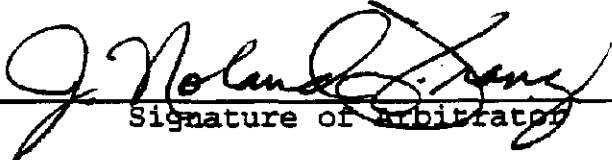
And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents, PaineWebber, Inc. and Arthur Herrera are jointly and severally liable and shall pay to the Claimants, Alston N. & Helen B. Smithers \$10,000.00 in actual damages.
2. Respondents, PaineWebber, Inc. and Arthur Herrera are jointly and severally liable and shall pay simple interest to the Claimants at the rate of 10% from September 8, 1989 to the date of payment of the award.
3. The Respondents are jointly and severally liable and shall pay \$3,000.00 in attorney's fees to the Claimants pursuant to A.R.S. Section 13-2314 subsection A.
4. Respondents PaineWebber, Inc. and Arthur Herrera shall bear their own costs and attorney's fees.
5. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc. PaineWebber, Inc. and Arthur Herrera shall pay \$150.00 to the Claimants as reimbursement.

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AFFIRMATION

I, J. NOLAND FRANZ, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.


Signature of Arbitrator

DATE OF DECISION: March 19, 1992