

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, N.Y. 10004
FAX (212) 858-4388

In the Matter of the Arbitration BetweenName of Claimants

Joseph Pacella, Alice Pacella
Joseph Pacella as Custodian et al..
DePalma/Pacella Inc. Esp.Profit Sh.Trust

vs.

Case #
91-01479

Name of Respondents

PaineWebber, Inc.
Charles M. Bonatakis

REPRESENTATION

For Claimants, Joseph Pacella, Alice Pacella, et al., Paul B. Zolan, Esq. of the law firm of Rogin, Nassau, Caplan, Lassman & Hirtle.

For Respondents, PaineWebber, Inc. ("PaineWebber") and Charles Bonatakis ("Bonatakis"), Joseph F. Generelli, Esq. in-house counsel.

CASE INFORMATION

Statement of Claim filed on May 13, 1991.

Claimant's Submission Agreement signed on May 2, 1991.

Joint Statement of Answer filed by Respondents on July 30, 1991.

PaineWebber's Submission Agreement signed on July, 30, 1991. Bonatakis' Submission Agreement signed on September 30, 1991.

HEARING INFORMATION

Pre-Hearing Conference: April 6, 1991, 1 session.

Hearing Dates and Sessions: April 30, 1991, 2 sessions.

May 1, 1991, 2 sessions.

May 18, 1991, 2 sessions.

May 26, 1991, 2 sessions.

May 27, 1991, 2 sessions.

Hearing Location: National Association of Securities Dealers, Inc. ("NASD") offices located in Boston, Massachusetts.

CASE SUMMARY

Claimants alleged that Respondent Bonatakis made unsuitable investment recommendations for them by convincing the Claimants to purchase substantial amounts of Heritage Bancorp ("Heritage"), a Western Massachusetts financial institution that had recently made its first public stock offering. Claimants alleged that Bonatakis' failure to learn the Claimants' investment needs as well as the unsuitable investment recommendations resulted in the violation of Article III, Section 2, of the NASD Rules of Fair Practice and Rule 405 of the New York Stock Exchange. Claimants alleged that Bonatakis knew or should have known that Claimants had little or no experience in the stock market and that Bonatakis actively encouraged Claimants to over-concentrate their investment in one security whose rating was being downgraded.

Claimants further alleged that Respondents violated their contract with Claimants by ignoring Claimants' expressed desires to mitigate extensive damages. Claimants alleged that Bonatakis resisted his clients' efforts to limit their losses and exposure to risk and urged Claimants to invest more of their capital into Heritage by utilizing the loan power of their margin account to its limit. Claimant alleged that PaineWebber was negligent in its supervision of Bonatakis and is, therefore, liable as Bonatakis' employer. Claimants alleged that Respondent PaineWebber violated NASD Rules by failing to oversee Bonatakis' actions specifically Article III Section 27(b), 27(d). Claimant further alleged that PaineWebber is responsible for Bonatakis' actions under the common law principle of Respondent Superior and Section 20(a) of the Securities and Exchange Act of 1934.

Respondents maintained that Claimant, Joseph Pacella is an attorney who has had extensive experience in commercial real estate and real estate development. Respondents also alleged that Mr. Pacella has acted as an attorney on behalf of Heritage and is familiar with and has had close communications with the officers of Heritage Bancorp. Respondent further alleged that both Claimants disclosed that their cumulative net worth was approximately forty million dollars and as a result of this information they were suitable for a margin account of the variety they received and their account was more than adequately handled given the circumstances.

Respondents maintained that Mr. Pacella understood margin accounts and bought Heritage in his margin account on an unsolicited basis. Respondent maintained that Mr. Pacella insisted that his portfolio remain invested 100% in stocks and it was the Pacellas desire to keep all investments in Heritage intact though market conditions and his account maintenance requirements dictated otherwise. Respondents maintained that Mr. Pacella was represented by counsel in order to file a 13D with the Securities and Exchange Commission so he was not without access to objective advice and that at no time did Bonatakis assure Claimants that Heritage shares were worth \$13.00 when its market value was below \$5.00 or that dollar cost averaging would be helpful to Claimants situation.

RELIEF REQUESTED

Claimants requested that the panel award them restitution in the amount of \$2,000,000.00 plus interest.

Respondents requested that the Statement of Claim be dismissed and that they be awarded costs in this matter.

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.

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) All claims by the Claimants against the Respondents are hereby dismissed.

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 \$11,000.00 for eleven hearing sessions at \$1,000.00 per session (\$1000.00 X 11 sessions = \$11,000.00) are assessed and shall be borne equally by the parties, so that each party is assessed \$5,500.00;
- 2) Claimants are further assessed the non-refundable filing fee of \$250.00;
- 3) Claimants deposited \$1,250.00 with the NASD and shall receive a credit of \$1,250.00. Therefore, the total amount due by Claimants is \$4,750.00.

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

ARBITRATION PANEL

Philip M. Giordano, Esq.	-	Public - Chairperson
Howard M. Schott, Esq.	-	Public
James D. Kaufman	-	Industry

Page 4
91-01479 Award

Concurring Arbitrator's Signature
Name


Philip M. Giordano, Esq.

Date of Decision: July 20, 1992

Page 4
91-01479 Award

Concurring Arbitrator's Signature
Name


Howard M. Schott, Esq.

Date of Decision: July 20, 1992

Page 4
91-01479 Award

Concurring Arbitrator's Signature
Name

James D. Kaufman
James D. Kaufman

Date of Decision: July 20, 1992