

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :

Rudolph F. Tenore :

Claimant :

vs. :

PaineWebber, Inc. :

Respondent :

CASE #91-01497
AWARD

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on May 14, 1991, Claimant Rudolph F. Tenore who appeared Pro Se, alleged that Respondent PaineWebber, Inc. failed to inform him of the payment due date for the purchase of Growth Fund of Spain, Inc. and he is, therefore, not required to pay the debit balance that exists in his account. The Claimant further alleged that in addition to not notifying him as to the payment due, PaineWebber, Inc. sold the fund three days prior to the payment deadline. The Claimant stated that had he been notified payment was due within seven days of the purchase date, he would have made payment within that time.

Respondent PaineWebber, Inc., through their in-house counsel, Joseph F. Generelli, maintained that the claimant was mailed notices, including two Western Union Mailgrams, which were to inform Claimant, Rudolph F. Tenore, of the outstanding debit in his account. PaineWebber, Inc. further maintained that the Claimant was sophisticated enough to know the terms of payment since he had initiated prior transactions, and the investment executive had previous discussions with the Claimant regarding payment terms. The Respondent also maintained that the liquidations of the Claimant's fund took place on March 9, 1990, which was after the settlement date of the transactions and was within their right as they reflected in the two Western Union Mailgrams sent to Claimant on March 1, 1991 and March 7, 1991.

PaineWebber, Inc. filed a Counterclaim against Claimant, Rudolph F. Tenore, which alleged that Claimant did not pay for the purchase of Growth Fund of Spain, Inc. forcing PaineWebber, Inc. to liquidate the account and causing a debit balance in the Claimant's account.

Pro Se Claimant Rudolph F. Tenore, in his Reply to the Respondent's Counterclaim, maintained that PaineWebber, Inc. did not fulfill its obligation to him because he was not provided with complete information about payment requirements. He further maintained that since he was not informed as such, he did not inspect the confirmation reports to find the payment due dates, but merely verified the amounts due to PaineWebber, Inc. for the purchases.

RELIEF REQUESTED

Claimant, Rudolph F. Tenore, requested that PaineWebber, Inc.'s counterclaim be dismissed in its entirety.

Respondent, PaineWebber, Inc. requested damages of \$1,552.75 plus simple interest at the rate of 10% from March 30, 1990, along with attorney's fees of \$155.27 and NASD filing fees.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, George Freund, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on April 24, 1991 and by the Respondent on June 28, 1991, respectively;

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. The Claimant, Rudolph F. Tenore, is liable and shall pay to Respondent, PaineWebber, Inc., \$1,552.71 in damages.
2. The Respondent PaineWebber, Inc.'s request for interest is denied.
3. The parties shall bear their respective costs, including attorney's fees.
4. The \$50 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Rudolph F. Tenore and the filing fee of \$575 previously deposited by Respondent PaineWebber, Inc. shall be retained by the NASD, Inc.

Page Three
Award 91-01497

AFFIRMATION

I, **GEORGE FREUND**, 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:

12/7/91

DATED BY THE NASD. INC.: January 10, 1992