

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Leonard Rosenberg and Herman Rose, as
Co-Trustees of TWR Sales Corp. Pension
Plan and Trust Defined Benefit Pension
Plan, TWR Sales Corp. Defined Contribution
Pension Plan, TWR Sales Corp. Profit
Sharing Trust, Twin Rose Produce
Corporation Defined Benefit Pension Plan,
Twin Rose Produce Defined Contribution
Pension Plan, and Twin Rose Produce Profit
Sharing Trust Plan

91-01841

Name of Respondent(s)

PaineWebber, Inc.
Hank Martin

REPRESENTATION

For Claimants: Robert Wayne Pearce, Esq. of Lerner & Pearce, P.A.

For Respondents: Patricia E. Cowart, Esq.-In-house Counsel for PaineWebber.

CASE INFORMATION

Statement of Claim filed: June 13, 1991.

Claimants' Submission Agreement signed on: May 29, 1991.

A joint Statement of Answer filed by Respondents: September 13, 1991.

Respondent, PaineWebber, Inc.'s ("PaineWebber") Submission Agreement signed
on: July 16, 1991 by Patricia E. Cowart on behalf of the firm.

Respondent, Hank Martin's ("Martin") submission agreement signed on: July 19,
1991.

HEARING INFORMATION

Hearing Date/Sessions: March 31, 1992-Two (2) Sessions.
April 01, 1992-Two (2) Sessions.

Hearing Location: Ft. Lauderdale, Florida.

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CASE SUMMARY

Claimants, the co-trustees of the Pension Plan, alleged that they were inexperienced investors when in 1988 they instructed Respondent, Martin, the account executive at Respondent, PaineWebber, who handled their account, that only safe and secure bonds were to be purchased by him for the Pension Plan accounts. Claimants alleged that despite their joint instructions and Martin's representations and promises, Martin embarked upon an investment strategy which involved the investment of the bulk of the Pension Plans' available funds in Corporate Income Funds High Yield Series 15 through Series 26 as well as corporate "junk bonds": MGM/UA; Carter Haley Hale; Pacific Lumber; RJR Holdings and Service Merchandise. Claimants further alleged that the Corporate Income Funds were a trust comprised of various corporate "junk bonds", that they were not triple "A" bond investments and that the trusts were unmanaged in that the securities were purchased and held in the trusts until maturity or default, regardless of the availability of any financial information to any prudent investor which would warrant the sale of the security to any prudent investor. Claimants further alleged that Concurrent with the investment in the Corporate Income High Yield Series, Martin also purchased the zero coupon or stripped bonds issued by U.S. Government agencies, many of which had maturity dates extending well beyond the targeted retirement date. Claimants contended that Martin falsely represented to them that the quality of the securities in the funds were safe, secure and fully capable of meeting Claimants' needs and that at no time did Martin disclose to Claimants that there was a high degree of risk associated with those investments, namely the high rate of default and the inability of certain corporations to obtain refinancing of the indebtedness and the consequences thereof. Claimants stated that Respondents failed to disclose to them that a power of attorney was necessary in order to operate an account on a discretionary basis and that prior approval of all transactions by Claimants was necessary before Respondents could execute transactions in their account. Claimants maintained that despite the adverse economic climate in 1990, Martin still recommended no change in the investment strategy causing claimants losses. Claimants stated that Respondents actions constituted the following: Violation of 517.301, Florida Statutes; Violation of Section 812.014 and 772.11, Florida Statute; Common Law Fraud; Breach of Fiduciary Duty; Violation of Title 29 USC 1101 et seq. ("ERISA"); Negligence; Breach of Contract. Claimants also stated that Respondent, PaineWebber, failed to supervise its employee, Martin.

Respondents, PaineWebber and Martin denied any liability to Claimants and alleged that the actual events as they occurred are nothing like those described in the Statement of Claim. Respondents maintained that Claimants, the co-trustees, had extensive business backgrounds which had allowed them to become successful and that in fact at various times when Martin made suggestions to take profits or minimize losses in some of the S&L holdings, Claimants emphatically refused to follow those suggestions based upon their own information and judgment. Respondents maintained that they conferred with Claimants on a regular basis and every transaction which took place in any of the accounts were discussed and authorized by Claimants. Respondents further stated that Martin reviewed the bond ratings with Claimants and noted

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that the bonds would be rated mostly "B" and that the phrase "junk bond" was discussed and previously known to Claimants who felt that the overall rating of the account would be acceptable and that the absolute dollar value of the zero coupon bonds' principal amount would make up for any risk to principal on the lower rated bonds which would have a substantially higher return. Respondents alleged that contrary to Claimants' allegations, in August of 1989 when economic conditions began to worsen, Martin suggested certain investment strategies which Claimants rejected. Respondents denied that there was ever any exercise of discretion and that there were any unauthorized transactions in Claimants' accounts. Respondents further stated that there was no breach of fiduciary obligations and that all of the investments were suitable given the investment objectives and totality of investments working together. Additionally, Respondents alleged that at all times mentioned in the Statement of Claim, PaineWebber maintained an adequate and reasonable system of supervision and control over its employees; and at all times acted in good faith and did not at any time directly or indirectly, induce any act or acts constituting a cause of action and that, therefore, Claimants are precluded from recovery herein.

RELIEF REQUESTED

Claimants requested an Award against Respondents, jointly and severally, for compensatory damages in excess of \$195,000.00; Lost profits in excess of \$116,000.00; Profits earned by Respondents, including, but not limited to profit on principal transactions with Claimants and commissions; Treble damages in excess of \$933,000.00; prejudgment interest at the rate of 12% interest per annum from the date of purchase; Punitive damages in excess of \$933,000.00; Attorneys' fees and costs including filing fees, photocopies expenses, expert witness fees, etc.

Respondents requested dismissal of the Claims and that all costs, including attorneys fees be assessed against Claimants.

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 arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, PaineWebber, Inc. and Hank Martin, are jointly and severally liable with respect to Claimants' Claim for negligence (count 6) and shall pay to Claimants the sum of Sixty Eight Thousand Five Hundred Twenty One Dollars and Fifty Cents (\$68,521.50) inclusive of pre-judgment interest;

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2. Claimants Claim for punitive damages is denied;
3. All other Claims are denied;
4. Each party shall bear its own costs and attorneys' fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD, Inc. shall retain the \$250.00 non-refundable filing fee previously deposited by Claimants and the following Forum Fees are assessed:

4 sessions @ \$1,000.00 per session = \$4,000.00 less \$1,000.00 previously deposited by Claimants = \$3,000.00.

Forum fees assessed against:

Respondents, PaineWebber, Inc. and Bank Martin, jointly and severally in the amount of \$3,000.00;

Respondents, PaineWebber, Inc. and Bank Martin, shall pay to Claimants an additional sum of \$1,000.00 which represents the initial filing fee previously deposited with the NASD by Claimants.

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

ARBITRATION PANEL

Name	Public/Industry
Casey W. Mills, Esq.	Public/Chairman
Samuel Morris, Esq.	Public/Panelist
Howard A. Tescher, Esq.	Industry/Panelist

Concurring Arbitrators' Signatures

/s/

Casey W. Mills, Esq.

/s/

Samuel Morris, Esq.

/s/

Howard A. Tescher, Esq.

Date of Award May 13, 1992