

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :
Everett and Emma Johns :
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 : Claimant :
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 : CASE #91-02055
vs. : AWARD
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 : Respondents :

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on July 2, 1991, Claimants, Everett and Emma Johns, who appeared Pro Se, alleged that in September 1989 they transferred their account from Merrill Lynch to Respondent, Kevin C. Maddox, a financial advisor at Respondent, PaineWebber Incorporated, at which time, they advised Respondent, Kevin C. Maddox that they were income oriented investors with a strong bias toward preservation of principal and that they did not want to purchase any additional Limited Partnerships. Claimants further alleged that Respondent, Kevin C. Maddox recommended that they become more aggressive with regards to stocks, so their buying power would conceivably not be eroded, he suggested that they choose a professional manager and their money was placed with PaineWebber Asset Management. Claimants contended that in August 1990 when they proceeded to transfer their account from Respondent, PaineWebber Incorporated they discovered that their \$30,000.00 investment in the "Walmart Bond" was actually a limited partnership not a bond as Respondent, Kevin C. Maddox had informed them. Claimants further contended that Respondent, Kevin C. Maddox had invested approximately \$30,000.00 in the Walmart Limited Partnership without their knowledge or consent. Claimants asserted that Respondents, PaineWebber Incorporated and Kevin C. Maddox betrayed their trust by misleading them into this investment and should be held accountable for their actions, therefore, they should compensate Claimants for the loss they sustained on the "Walmart Bond".

Respondent, PaineWebber Incorporated, by and through their in-house counsel, Joseph F. Generelli, maintained that in November 1989 Claimants, Everett and Emma Johns instructed Respondent, Kevin

C. Maddox, to purchase 3,000 shares of PaineWebber Retail Property Investments, Inc. ("PRPI") at \$10.00 a share for a total cost of \$30,000.00 after Respondent, Kevin C. Maddox had showed Claimants extensive material regarding this investment, including a prospectus, and explained the inherent risks associated with it. Respondent, PaineWebber Incorporated further maintained that in February 1990, Claimants instructed Respondent, Kevin C. Maddox to sell their 3,000 shares of PRPI, at which time, Respondent, Kevin C. Maddox listed the shares for sale but their shares were not "picked-up". Respondent, PaineWebber Incorporated contended that in July 1990 when Claimants shares were not picked-up, they instructed Respondent, Kevin C. Maddox to simply liquidate their position in PRPI, at which time, Respondent, Kevin C. Maddox informed them there was no ready market but he would list the shares "For Sale at Best Offer". Respondent, PaineWebber Incorporated further contended that when an offer was received, Respondent Kevin C. Maddox informed Claimants that the discount would be big, at which time, Claimants instructed him to draw up the necessary papers to effect the delivery of their shares of PRPI. Respondent asserted that on August 17, 1990 Claimants signed the Authorization Letter that outlined the costs associated with the transaction and the net amount due to them. Respondent, PaineWebber Incorporated further asserted that at all relevant times they carried out their fiduciary duties to the Claimants and the fact that Claimants signed the Transfer papers evidences their consent to this transaction, therefore, Respondent, PaineWebber Incorporated is not liable for Claimants losses.

Respondent, Kevin C. Maddox, who appeared Pro Se, maintained that he ascertained Claimants, Everett and Emma Johns investment objectives and developed a three-part investment program for them, prior to recommending the investment in PaineWebber Retail Property Investments, Inc. ("PWRPI"), a real estate investment trust in the form of a corporation. Respondent, Kevin C. Maddox further maintained that he reviewed the program with Claimants and fully discussed with them the PWRPI investments illiquidity, in addition to, delivering sales literature and prospectus about PWRPI. Respondent, Kevin C. Maddox contended that Claimants consented to the purchase of 3,000 shares of PaineWebber Retail Property Investments, Inc. and later in February 1990, informed Respondent, Kevin C. Maddox that they wished to liquidate the PWRPI investment. Respondent, Kevin C. Maddox further contended that when the shares were not purchased by dividend reinvestment, Claimants discussed liquidating the PWRPI investment through the best offer sale even if below par, at which time, Respondent, Kevin C. Maddox specifically informed the Claimants that the best offer sale would be for less than the amount of their investment. Respondent, Kevin C. Maddox asserted that he received an offer to purchase the PWRPI shares and informed Claimants of the price of the offer, at which time, Claimants instructed him to get the papers and do the deal.

Respondent, Kevin C. Maddox further asserted that on August 17, 1990 Claimants signed the necessary paperwork thus, consenting to this transaction, therefore, Respondent, Kevin C. Maddox should not be liable for their losses.

RELIEF REQUESTED

Claimants, Everett and Emma Johns requested \$6,228.00 in actual damages.

Respondent, PaineWebber Incorporated requested the claims be dismissed in its entirety.

Respondent, Kevin C. Maddox requested the claim be denied.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Paul A. Yates, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on June 18, 1991, by the Respondent, PaineWebber Incorporated on November 18, 1991 and by the Respondent, Kevin C. Maddox on November 18, 1991.

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. Respondent, PaineWebber Incorporated is liable and shall pay to the Claimants, Everett and Emma Johns the sum of \$3,485.00 in actual damages.
2. Respondent, Kevin C. Maddox is liable and shall pay to the Claimants, Everett and Emma Johns the sum of \$600.00 in actual damages.
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants, Everett and Emma Johns shall be retained by the NASD, Inc.

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AFFIRMATION

I, **PAUL A. YATES**, 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:

6/18/92 ✓

DATED BY THE NASD, INC.: June 24, 1992