

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Amvets Money Pruchase Pension Fund

91-02178

Name of Respondents

PaineWebber, Inc.  
Amos Mitchell

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REPRESENTATION

For Claimant: Leonard J. Henzke, Esq. of the law firm of Lehrfeld, Canter & Henzke.

For Respondent: Joseph Generelli, Esq.

CASE INFORMATION

Statement of Claim filed: July 16, 1991.

Claimant's Submission Agreement signed on: July 8, 1991.

Joint Statement of Answer filed by Respondents on: October 4, 1991.

Respondent Amos Mitchell's Submission Agreement signed on: September 23, 1991.

Respondent PaineWebber, Inc.'s Submission Agreement signed on: October 3, 1991.

HEARING INFORMATION

Pre-Hearing Conference: February 11, 1992.

Hearing Dates/Sessions: June 10, 1992, 2 Sessions.  
June 11, 1992, 2 Sessions.  
November 12, 1992, 2 Sessions.

Hearing Location: NASD offices located in Washington, DC.

### CASE SUMMARY

Claimant alleged that the purchase of 240 shares of Fiduciary Capital Pension Partners, 10,000 shares of Corporate Property Associates 10 and an additional 10,000 shares of Corporate Property Associates 10 constituted prohibited transactions between the Pension Fund Plan and a party in interest within the meaning of the Employee Retirement Income Security Act ("ERISA") as Mr Mitchell was the principal adviser to the Pension Fund and employed as an investment broker by PaineWebber, Inc., and constituted violations by Respondents of the general fiduciary responsibility provisions of ERISA, including the prudence rule and as a result, the pension fund failed to receive the income return which prudent fiduciary investments were earning; the securities are substantially illiquid and have declined sharply in value and are likely to continue to decline in the foreseeable future. Claimant further alleged Respondents made various statements to Claimant which were knowingly or recklessly false and constituted untrue statements of material fact and at the time of the purchases Claimant was unaware of the falsity of such representations and made the purchases in reliance on such misrepresentations and as a result, the securities purchased are unsalable, they have failed to produce income as represented by Respondents and will likely decline in value further. Claimant further alleged as a proximate result of the fraudulent conduct of Respondents, the Pension Fund has been damaged in an amount equal to the difference between the purchase price of the securities, and the present value of such securities, plus interest which it could have received from comparable investments but has not received and will likely be further damaged as the value of the securities decline and the actions of Respondents constituted common law fraud and a breach of the fiduciary duties owed to Claimant.

Respondents maintained at no time was Respondent Amos Mitchell a member of the Pension Trustee Board during the two years that he was the National Finance Officer; all three investments were fully discussed with the Trustees of the Purchase Plan and all of whom were authorized by the Corporate Resolution to effect trades in the Purchase Plan account and Respondents deny that they have committed any violation of ERISA, misrepresented any portion of the nature or the risks involved in any of the investments and deny that they have committed any violation of any applicable securities law and Claimant has suffered no damage as a result of any action by either PaineWebber, Inc. or Amos Mitchell. Respondents further maintained Claimant did not reasonably rely to the detriment of any action or inaction of Respondents and Claimant knew and understood the risks associated with the investments made in the account and represented itself as willing and able to assume those risks and the investments at issue were suitable to Claimant's financial circumstances, background, experience and objectives.

### RELIEF REQUESTED

Claimant requested that Respondents refund the purchase price of the securities in exchange for such securities; punitive damages in the amount of \$500,000.00 ; interest from the date of purchase to the date of the award in an amount which a reasonable and prudent investment of such funds would have earned; costs; attorneys' fees and such further relief as is deemed appropriate in the circumstances.

Respondents requested that the claim be dismissed in its entirety with costs assessed against the Claimant.

### OTHER ISSUES CONSIDERED & DECIDED

Respondents made a Motion to Enter a third party claim against Robert L. Jones, Joseph F. Ramsey and Robert Thompson individually in their capacity as trustees and fiduciaries of the Pension Fund who were authorized to trade in the PaineWebber, Inc. accounts demanding that they contribute at least equally to and/or fully indemnify Respondents for any damages assessed against them. This request was objected to by the Claimant who maintained all of the named individuals were not trustees and the trustees have not consented to be subject to the arbitration and the NASD has no jurisdiction over them as individuals. The arbitration panel denied the Respondents' request to add a third party claim.

### 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. All claims against PaineWebber, Inc. be and hereby are dismissed in all respects.
2. While the arbitration panel determined that Respondent Amos Mitchell violated a duty owed to the Claimant, the panel has also determined that the Claimant did not suffer any damages.
3. Each party shall bear their respective costs including attorneys' fees.

**FORUM FEES**

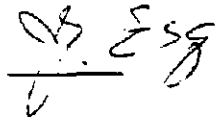
Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed:

6 Sessions + one pre-hearing conference = \$6,000.00 + \$300.00  
= \$6,300.00 minus Claimant's hearing session deposit of  
\$1,000.00 minus Respondents' hearing deposit of \$1,000.00 =  
\$4,300.00 due.

The Claimant be and hereby is liable and shall pay to the NASD the sum of \$2,150.00 to represent forum fees and the Respondents be and hereby are liable jointly and severally and shall pay to the NASD the sum of \$2,150.00 to represent forum fees.

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

**ARBITRATOR SIGNATURES**

  
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16, 1993