

## N.A.S.D. AWARD

## NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of  
Securities Dealers, Inc.  
One East Broward Boulevard  
Suite 1000  
Ft. Lauderdale, Florida 33301  
(305) 522-7391

In the Matter of the Arbitration Between )

Name of Claimant(s) )

Caroline Penny Maxwell )

Case No. 91-02194

Name of Respondent(s) )

PaineWebber, Inc. )

Andrew Winston )

REPRESENTATION

For Claimant, Caroline Penny Maxwell ("Maxwell"): Robert W. Pearce, Esq. of Lerner & Pearce.

For Respondents, PaineWebber, Inc. ("PW") and Andrew Winston ("Winston"): Steven M. Greenbaum, Esq. of PaineWebber, Inc.

CASE INFORMATION

Statement of Claim filed: July 17, 1991. Claimant's Submission Agreement signed: July 11, 1991.

Respondents' Joint Statement of Answer filed: September 19, 1991. Respondent, PW's, Submission Agreement signed: August 2, 1991, by Patricia Cowart, Esq. and Respondent, Winston's, Submission Agreement signed: August 5, 1991.

HEARING INFORMATION

On July 7, 1992, in Fort Lauderdale, Florida, a hearing lasting two sessions was conducted.

CASE SUMMARY

Claimant alleged that she is a 52 year old widow and a high school graduate with limited income and with no training or education in the securities industry. Claimant alleged that prior to meeting Respondents her investment experience had been limited to Certificates of Deposit and one investment in the Colonial Government Securities Plus Trust and she had inherited some New York Telephone bonds from her father. Claimant alleged that upon learning that her primary investment was in the Colonial Group Government Securities Plus Trust, Winston falsely represented that the Trust's value had declined because it was a poorly managed and an unsafe investment and that he recommended the sale of the Colonial Government Securities Plus Trust and

**AWARD-#91-02194**

recommended that she purchase, and later purchased for her, the "Eaton Vance Income Plus Trust" which he stated was a mutual fund which was better managed and diversified with three types of securities which would increase in value and give her income at the same time. Claimant alleged that the "Eaton Vance Income Plus Trust" never existed. Claimant maintained that the Eaton Vance High Income Trust was a "junk bond" which did not provide diversification in the three different securities as represented by Winston. Claimant stated that the foregoing constituted Violation of Chapter 517.301, Fla. Stat.; Common Law Fraud; Breach of Fiduciary Duty; Negligence and Breach of Contract as a result of which Claimant has been damaged.

Respondents denied all allegations of wrongdoing and maintained that Claimant and her accountant were apprised and advised fully of the risks and benefits of each potential investment and that consistent with her desire to receive a greater monthly income, Claimant, after consultation with both Winston and her accountant, decided to sell her Colonial mutual fund and purchase shares in Eaton Vance High Income Trust which had an excellent historical record and was compatible with Claimant's objective of high income. Respondents further maintained that prior to purchase, Claimant and her accountant received a copy of the prospectus on Eaton Vance as well as historical comparisons of Eaton Vance vis a vis Colonial.

**RELIEF REQUESTED**

Claimant requested an award of Compensatory damages in excess of \$24,776.52; prejudgment interest at the rate of 12% interest per annum from the date of purchase; punitive damages; attorneys' fees; costs including filing fees, photocopies expenses, expert witness fees, etc.

Respondents requested an award in their favor against Claimant, together with costs incurred in the defense of this matter including reasonable attorney's fees as allowed under applicable law.

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

1. Respondents, FW and Winston, are found liable, jointly and severally, and shall pay to the Claimant the amount of Seven Thousand Ninety Two Dollars and No Cents (\$7,092.00), including interest;
2. Claimant's request for attorney's fees is denied.

BOARD-#91-02194

OTHER COSTS

The parties shall bear all other costs incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$800.00 (Two (2) hearing sessions X \$400.00)

Respondent, PaineWebber, is assessed forum fees of \$800.00, \$400.00 of which shall be paid directly to the Claimant representing a refund of the hearing session deposit previously deposited by her. The remaining \$400.00 shall be paid to the NASD.

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

ARBITRATION PANEL

Concurring Arbitrators' Signatures

/s/

\_\_\_\_\_  
Robert Herschmann, Esq.  
(Public/Chairman)

/s/

\_\_\_\_\_  
Anthony S. Pastro, Esq.  
(Industry/Panelist)

/s/

\_\_\_\_\_  
Elizabeth L. Clark  
(Public/Panelist)

Date of Decision: August 14, 1992