

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Richard and Marion Graham

Case No. 91-02761

Name of Respondent(s)

PaineWebber, Inc.
John Weckbaugh

REPRESENTATION

For Claimants: Richard and Marion Graham ("Grahams"): Howard J. Swibel, Esq. and Stanley M. Lipnick, Esq. of Arnstein & Lehr.

For Respondents, PaineWebber, Inc ("PW") and John Weckbaugh (Weckbaugh"): Steven M. Greenbaum, Esq. and Gary Stegland, Esq. of PW.

CASE INFORMATION

Statement of Claim filed: September 3, 1991. Claimants' Submission Agreement signed: August 5, 1991.

Respondents' Statement of Answer filed: November 15, 1991. Respondents' Submission Agreements signed: October 14, 1991 by Weckbaugh, and October 3, 1991 by Patricia E. Cowart, Esq. on behalf of PW.

HEARING INFORMATION

On October 28, 1992, in Fort Lauderdale, Florida, a pre-hearing conference lasting one session was conducted via telephone conference call with an arbitrator.

On November 9, 10, 11, 12, 13, 23 and 24, 1992 and February 18, 19, 25 and 26, 1993, in Fort Lauderdale, Florida, hearings lasting 24 sessions were conducted.

CASE SUMMARY

Claimants alleged that Respondents, through Weckbaugh, breached their fiduciary duties to Claimants to manage their discretionary accounts in good faith and in accord with Claimants' investment objectives of preservation of capital and avoidance of the risks of investment in real estate and illiquid limited partnership interests; that PW failed to adequately supervise Weckbaugh to insure compliance with his obligations; that Respondents made unauthorized trades in unsuitable illiquid securities such as limited partnerships, including real estate LP's, and purchase of unsuitable private activity bonds. Claimants further alleged that Respondents churned Claimants' accounts by: excessive trades of fixed income securities, primarily long term tax free bonds; excessive margin transactions to purchase long term bonds yielding less than the margin interest charged; excessive mutual fund turnover; unauthorized and excessive illiquid investments; unauthorized and excessive purchases of Corporate Property Associates ("CPA") LP's; and, improper purchase of unsuitable private activity bonds.

Respondents denied all allegations of wrongdoing and alleged that Claimants are wealthy and litigious individuals who are unhappy that, with hindsight, the trading in their accounts was not more profitable; that the transactions were suitable; that all transactions and strategies were made with the specific prior approval of the Grahams; all investments were authorized; that margin usage was authorized; and, that Claimants were fully aware of all transactions and strategies through prior consultation, confirmations, monthly account statements and reports on the various securities.

Respondents alleged the affirmative defenses of failure to state a claim; bar by statute of limitations; bar by knowledge, ratification and waiver; all transactions were made at the request of Claimants; laches and estoppel; good faith and no intent; failure to mitigate; failure to use due diligence; bar by failure to seasonably complain or disaffirm; no proximate cause; comparative negligence; and, proper supervision, good faith and no inducements of any act constituting a cause of action.

RELIEF REQUESTED

Claimants requested compensatory damages in the total amount of at least \$6,985,818.00, and/or an accounting and recovery of profits by PW for long term bonds, mutual funds, and non-beneficial margin trading; damages and/or rescission of purchases of illiquid investments; punitive damages, costs, attorney's fees and, further relief.

Respondents requested dismissal and costs.

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 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 and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, PW and Weckbaugh, are found liable, jointly and severally.
2. Claimants are found to have been comparatively negligent in the handling of their account and/or have partially failed to mitigate their damages; partially failed to use due diligence with respect to the transactions and acts complained of; and, partially failed to seasonably complain of or to disaffirm the transactions. Therefore, the award set forth below has been reduced accordingly.
3. With reference to the limited partnerships, the Panel orders a rescission under the terms and conditions set forth below:

A. The Claimants shall tender all of their right, title and interest in and to the following partnerships to PW:

1. CPA 7
2. CPA 8
3. CPA 9
4. CPA 10
5. PaineWebber Insured Mortgage Partners
6. PaineWebber Insured Living Investments
7. PaineWebber Geodyne III B
8. PaineWebber Geodyne III C
9. PaineWebber Geodyne III D
10. PaineWebber Geodyne III E
11. PaineWebber Individual Living Mortgage II
12. Fiduciary Capital Partners

B. Simultaneously, and in exchange for the securities tendered in paragraph A, PW shall simultaneously pay the sum of \$2,081,000.00 to the Grahams, which sum represents their initial capital investment in the aforementioned limited partnerships.

4. With reference to all other claims, inclusive of damages, interest and costs, Respondents shall pay to the Claimants the further amount of \$563,327.89.
5. Claimants' requests for punitive damages and attorney's fees are denied.

OTHER COSTS

The parties shall each bear all other expenses incurred by them in connection with this proceeding, including attorney's fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$24,300.00 (one pre-hearing conference x \$300.00 plus 24 sessions x \$1,000.00).

2. Claimants are hereby assessed \$12,150.00 for which the NASD shall retain the \$11,500.00 previously deposited in partial satisfaction thereof, leaving a balance due of \$650.00 payable to the National Association of Securities Dealers, Inc.

3. Respondents, PW and Weckbaugh, are hereby assessed \$12,150.00, jointly and severally, for which the NASD shall retain the \$11,500.00 previously deposited in partial satisfaction thereof, leaving a balance due to \$650.00 payable to the National Association of Securities Dealers, Inc.

4. The NASD shall retain the non-refundable filing fee of \$250.00 paid by the Claimants.

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

Concurring Arbitrators' Signatures

| Name | Public/Industry |
|---------------------------------------|-----------------|
| <u>/s/</u> Randy R. Freedman, Esq. | Public |
| <u>/s/</u> Carl J. Hegner | Industry |
| <u>/s/</u> James M. Dunne | Public |

Date of Decision: MARCH 24, 1993