

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

John J. Robson

91-03221

Name of Respondent

PaineWebber, Inc.

REPRESENTATION OF PARTIES

For Claimant, John Robson: Edward Koppman, Esq. and Mary L. O'Connor, Esq. of Akin, Gump, Hauer, & Feld, L.L.P., Dallas Texas.

For Respondent, PaineWebber, Inc.: Sarah G. Anderson, Esq. of PaineWebber, Inc., Weehawken, New Jersey and Charles Geister, Esq. of Ryan Corbyn & Geister, Oklahoma City, Oklahoma.

CASE INFORMATION

Claimant John Robson's Statement of Claim filed: October 10, 1991.

Claimant's Submission Agreement signed on: October 28, 1991.

Statement of Answer filed by Respondent PaineWebber, Inc. on: January 14, 1992.

Respondent PaineWebber, Inc.'s Submission Agreement signed on: January 10, 1992.

HEARING INFORMATION

Pre-Hearing Conference: July 17, 1992 for one (1) session with NASD staff. July 22, 1992 for one (1) session with Chairman.

Hearing dates: August 24, 1992 for two (2) sessions;
August 25, 1992 for two (2) sessions;
August 26, 1992 for two (2) sessions;
September 10, 1992 for two (2) sessions;
September 11, 1992 for two (2) sessions;
September 29, 1992 for two (2) sessions;
September 30, 1992 for two (2) sessions;
October 1, 1992 for three (3) sessions.

Hearing Location: Oklahoma City, Oklahoma.

CASE SUMMARY

Claimant John Robson ("Robson") alleged that, based upon representations made by PaineWebber, Inc.'s ("PaineWebber") representative, Robson agreed to sell short 403,300 shares of Wal-Mart stock. More specifically, Robson alleged that pursuant to PaineWebber's recommendation, he opened a margin account with PaineWebber and transferred 403,350 shares of Wal-Mart stock to PaineWebber. Robson alleged that PaineWebber advised him that "shorting against the box" would eliminate any risk associated with a decrease in the price of Wal-Mart stock. Robson later alleged that "shorting against the box" was not a suitable transaction for him.

Robson alleged that certain material facts were misrepresented to him and that other material facts were omitted when he agreed to enter into the "shorting against the box" transaction. The misrepresentations and omissions include the following:

- (a.) PaineWebber's representative represented that margin interest costs would be eliminated if Robson "shorted against the box" and that such would be true even if the price of Wal-Mart stock increased in value;
- (b.) Robson was never informed that he would be charged interest on the "mark to market on his short position."
- (c.) Robson was told that he would be paid interest on the proceeds from his short sale at a rate of three-fourths of "broker call" whereas later he was advised for the first time that he was only being paid at a rate of two-thirds of "broker call."

Robson alleged that but-for the misrepresentations and omissions of material fact, Robson would not have authorized the "shorting against the box" transaction. Robson alleged that the conduct described in (b) and (c) above also constituted a breach of contract. Robson also alleged that PaineWebber breached its agreement with Robson when its broker failed to execute his order to cover the short position in October of 1990. Robson further alleged that PaineWebber was negligent in its handling and monitoring of Robson's account.

In Robson's Supplement to Statement of Claim, he alleged the following additional violations: (1) Common Law Fraud, (2) Breach of Fiduciary Duty, and (3) Oklahoma Deceptive Trade Practices Act.

PaineWebber, in its Answer, alleged the following affirmative defenses: (1.) estoppel, (2.) ratification, (3.) waiver, laches and statute of limitations, (4.) failure to state a cause of action, (5.) express authorization, (6.) negligence, (7) failure to mitigate damages, (8.) assumption of risk, (9.) respondent at all times acted in good faith, (10.) respondent's good faith effort to establish adequate supervisory and compliance procedures.

PaineWebber alleged that the "short against the box" transaction was entirely appropriate for Robson in view of his objectives of preserving the value of his Wal-Mart stock in a volatile down market during the Persian Gulf crisis and protecting him against margin calls on a short to intermediate-term basis. PaineWebber also alleged that any loss is not due to their conduct but solely to market conditions and the client's own negligence.

PaineWebber, in its Amendment to Their Answer and Response to Supplement To Statement of Claim denied any liability for the common law fraud allegation, breach of fiduciary duty allegation, and violation of the Oklahoma Deceptive Trade Practice Act.

RELIEF REQUESTED

Claimant requested judgment rescinding the "shorting against the box" transaction, or, an order enjoining PaineWebber from charging any further interest to Robson's account on the mark to market on the short position; or in the alternative, money damages in an amount not less than \$8,695,148.00; disgorgement of all profits made by PaineWebber on the "short against the box" transaction, including all forms of commissions, interest, and other revenues generated by the transaction; attorney's fees, costs; and such other and further relief to which the panel may find Robson to be entitled.

Respondent requested dismissal of claimant's Statement of Claim and the Supplement To Statement of Claim against PaineWebber, Inc. with costs to be taxed against claimant, including reasonable attorney's fees incurred by PaineWebber, Inc.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed by 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.

The counsel for claimant filed a request to file a Supplement to the Statement of Claim. Prior to the hearing, the panel granted the claimant's request. Subsequently, the counsel for respondent filed an Amendment to Answer and response to the Supplement to Statement of Claim which the panel admitted.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and the parties' respective post-hearing briefs, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent PaineWebber, Inc. shall be and hereby is liable for, and shall pay to the Claimant, John Robson, damages in the amount of Nine Million, Five Hundred Eighty Six Thousand, Seven Hundred Forty Nine Dollars and No Cents (\$9,586,749.00); (See Footnote 1 below.)
2. Respondent PaineWebber, Inc. shall be and hereby is liable for, and shall pay to the Claimant, John Robson, costs in the amount of Three Thousand Eight Hundred Seventy Eight Dollars and Eighty Cents (\$3,878.80);
3. Respondent PaineWebber, Inc. shall be and hereby is liable for, and shall pay to the Claimant, John Robson, attorney's fees in the amount of Ninety Four Thousand, Nine Hundred Seventy Three Dollars and No Cents (\$94,973.00);
4. The Claimant's relief requests not provided for herein are denied;
5. Each of the parties shall bear their own costs and expenses incurred, other than those specifically provided for herein.

Footnote 1. Arbitrator Bob J. Bollinger dissents from this part of the Award. Arbitrator Bollinger would grant rescission to the claimant rather than money damages.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

1 pre-hearing conference session (with the Chairman) X
\$300.00 = \$300.00

17 hearing sessions X \$1500.00 = \$25,500.00

Pursuant to Section 43(c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$300.00, and shall retain the hearing session deposit in the amount of \$1500.00 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$24,300.00 are assessed against Respondent PaineWebber.

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

By The Arbitration Panel:

Dated:

December 3, 1992

/s/

Dennis S. Boxeur, Esq.
Dennis S. Boxeur, Esq.
Presiding Chair
Public Arbitrator

December 1, 1992

/s/

LeRoy Patton, Esq.
LeRoy Patton, Esq.
Public Arbitrator

December 1, 1992

/s/

Bob J. Bollinger, CFP
Bob J. Bollinger, CFP
Industry Arbitrator

Date of Service by the NASD: December 4, 1992