

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)

The White House, Inc. et al.

91-03619

Name of Respondent(s)

PaineWebber, Inc.
William Kane
Timothy J. Terry

REPRESENTATION

For Claimant, The White House, Inc. Profit Sharing Plan and Howard M. Litsky, Participant, Robert H. Sorensen, Esq. of Kaufman, Chaiken & Sorensen.

For Respondents, PaineWebber, Inc. ("PaineWebber"), William Kane ("Kane") and Timothy J. Terry ("Terry"), Edward Werner, Esq. of PaineWebber, Inc.

CASE INFORMATION

Statement of Claim filed: 11/18/91.

Claimant's Submission Agreement signed on: 11/7/91.

Joint Statement of Answer filed by Respondents, PaineWebber, Kane and Terry on: 2/24/92.

Respondent, PaineWebber's Submission Agreement and Corporate Acknowledgement signed on: 3/25/92 by Joseph F. Generelli on behalf of the firm.

Respondent, Kane's Submission Agreement signed on: 3/10/92.

Respondent, Terry's Submission Agreement signed on: 3/23/92.

HEARING INFORMATION

Pre-Hearing Conference with an arbitrator held: 7/14/92.

Hearing Date/Sessions: 7/28/92-Two (2) Sessions.
7/29/92-Three (3) Sessions.

Total number of sessions: Five (5) Sessions.

Hearing Location: Atlanta, GA

CASE SUMMARY

Claimant alleged that White House, which is a Georgia Corporation, established a profit sharing plan to provide benefits for the retirement for each of its employees and that Litsky is the President of White House and serves as Trustee of the Profit Sharing Plan of which he is also a participant. Claimant alleged that due to continued high-pressure solicitations by Respondent, Terry, Litsky was persuaded on July 10, 1991 to open a commodities trading account. Claimant alleged that thereafter, Respondents violated the NASD's rules regarding suitability by allowing retirement funds invested in the Profit Sharing Account to be used to engage in speculative commodities and options trading; that Respondents intentionally engaged in unauthorized trading to the detriment of Claimant; that Respondents, PaineWebber and Kane permitted Respondent Terry to exercise independent and unauthorized discretion in effecting commodities transactions for Claimant's account; that Respondents intentionally made false and misleading statements of material facts regarding the nature of the risks associated with commodities trading; that Respondents breached their fiduciary duty toward Claimant; that Respondents PaineWebber and Kane aided and abetted Respondent, Terry's violations and failed to adequately supervise the activities of Respondent, Terry.

Respondents denied all allegations of wrongdoing and maintained that Claimant was fully aware of the speculative nature of the trading in his account and that Claimant's attempt to portray himself as an investor who wanted only conservative type of trading for his retirement plan is patently false. Respondents further maintained that, had Claimant genuinely not wanted to do the type of trading complained of in the Claim, he would have complained at the time he received his very first confirmation but that instead he continued to receive confirmations and to speak to Terry while the trading was conducted in his account. Respondents contended that Claimant is perfectly able to understand that the trading was substantially risky as in fact he confirmed when he executed his risk disclosure statement.

RELIEF REQUESTED

Claimant requested: actual damages of \$26,916.00 as well as punitive damages in the amount of \$400,000.00 plus attorneys' fees and costs. Claimant also requested interest on said losses computed from July 12, 1991 to the date of the award.

Respondents requested that the Claim be dismissed with costs to be assessed against the Claimant.

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.

BOARD

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. Respondent, William Kane, is found not liable and, therefore, all claims against him are hereby dismissed;
2. Respondents, PaineWebber, Inc. and Timothy J. Terry, are found liable, jointly and severally, and shall pay to Claimant the sum of Twelve Thousand Two Hundred Fifty Dollars and No Cents (\$12,250.00);
3. Claimant's request for punitive damages is denied;
4. Claimant's request for attorneys' fees is denied.

OTHER COSTS

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

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$4,050.00 (One pre-hearing telephone conference X \$300.00 + five hearing sessions X \$750.00).

Claimant is hereby assessed forum fees of \$2,025.00 for which the NASD shall retain the \$750.00 previously deposited in partial satisfaction thereof leaving a balance of \$1,275.00 payable to the NASD;

Respondents, PaineWebber, Inc. and Timothy J. Terry, are hereby assessed, jointly and severally, forum fees of \$2,025.00 .

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

ARBITRATION PANEL

Concurring Arbitrators' Signatures

/s/

Richard Allan Kaye, Esq.
(Public/Chairman)

/s/

Robert H. Putnam, Jr., Esq.
(Public/Panelist)

/s/

Gregory A. Brumeloe
(Industry/Panelist)

Dated: October 6, 1992