

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, N.Y. 10004
FAX (212) 858-4389

In the Matter of the Arbitration BetweenName of Claimants

Ralph P. & Mary Turchi

91-03857

Name of RespondentsPaineWebber, Inc.
Dominick M. Schina

REPRESENTATION

For Claimants: Leonard Spear, Esq.

For Respondents: Edward Werner, Esq.

CASE INFORMATION

Statement of Claim filed: December 6, 1991.

Claimant's Submission Agreement signed on: December 3, 1991.

Statement of Answer filed by Respondents PaineWebber, Inc. and Dominick M. Schina on: January 27, 1992.

Respondents PaineWebber, Inc. and Dominick M. Schina's Submission Agreements signed on: June 12, 1992.

HEARING INFORMATION

Hearing Date/Sessions: June 9, 1992, One Session.

Hearing Location: NASD offices located in Philadelphia, PA.

CASE SUMMARY

Claimants alleged that Respondent Dominick Schina, while in the course of duty with Respondent PaineWebber, Inc., induced Claimants to invest \$50,000 in the Putnam Option Income Fund (the "Fund"), knowing that Claimants' primary investment objective was the preservation of the initial \$50,000 of investment capital. Claimants further alleged that they were induced by Schina to receive \$50 per month less than the amount of monthly income which he had promised them from their investments, with the assurance, in both

written and oral forms, that their \$50,000 initial investment would be maintained by their reinvestment of such additional dividends. Claimants further alleged that as of February 1, 1991, the value of their investment in the Fund was \$35,040.18, and that they have suffered as a result of relying on Schina's guarantees. Claimants also alleged that by Respondents failing to honor the written guarantee, there was a breach of contract.

Respondents denied Claimants' allegations that they were primarily interested in preserving their initial investment capital of \$50,000, and maintained that Claimants stated they were interested in investing in more speculative vehicles which they felt could earn a better return, so they discussed the Fund with Schina. Respondents further maintained that Schina specifically told them that the Fund was a diversified portfolio composed of common stocks in which covered call options can be written, and that Claimants were provided with a prospectus of the Fund, which states that it is managed to seek high current return. Respondents denied stating or implying that the Fund was a guaranteed investment, claiming that the letter which the Claimants refer to as a written guarantee was rather an explanation of how the investment was to work. Furthermore, the Respondents asserted that in the letter, Schina merely suggested that the Claimants reinvest their monthly distribution in the account in order to maintain its principal investment. Respondents further maintained that Claimant desired to take on the risk of investing in a vehicle that did have some potential to decline in value in return for the potential reward of greater return on his investment, and did so after having discussions with Schina and then making an educated decision.

RELIEF REQUESTED

Claimants requested:

- a. \$14,960 actual damages, equal to the difference between the guaranteed value of Claimants' investment and the value of Claimants' investment as of February 1, 1990;
- b. interest on the amount of the actual damages;
- c. costs of this action; and
- d. reasonable attorney's fees.

Respondents requested that the claim be dismissed with costs assessed against Claimants.

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. The Respondents be and hereby are liable jointly and severally and shall pay to the Claimants the sum of \$3,142.00, inclusive of interest.
2. Each party shall bear their respective costs, including attorney's fees.

FORUM FEES


Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

1 session x \$400 = \$400 less hearing session deposit of \$400 = \$0 due

Respondents be and hereby are liable jointly and severally and shall pay to Claimants the sum of \$200.00 to reimburse them for the fees paid.

The N.A.S.D. shall retain the \$100.00 claim filing fee previously paid by Claimants.

ARBITRATOR SIGNATURES


Richard B. Liden, Esq.

Public


Victoria E. Johnson

Public


Michael D. Neft

Industry

Date of Decision: June 30, 1992