

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Morris Goldberg

91-03908

Name of Respondents

PaineWebber, Inc.  
Tom Byer

REPRESENTATION

For Claimant: Marvin A. Jaffe, Esq. a sole practitioner.

For Respondents, PaineWebber, Inc. and Tom Byer: James E. Farnham, Esq. of Hunton & Williams.

CASE INFORMATION

Statement of Claim filed: February 10, 1992.

Claimant's Submission Agreement signed on: December 6, 1991.

Joint Statement of Answer filed by Respondents, PaineWebber, Inc. and Tom Byer on: May 13, 1992.

Respondent, PaineWebber, Inc.'s Submission Agreement signed on: May 5, 1992.

Respondent, Tom Byer's Submission Agreement signed on: May 5, 1992.

HEARING INFORMATION

Hearing Date/Sessions: November 18, 1992 - 2 Sessions.

Hearing Location: Omni Richmond Hotel - Richmond VA.

CASE SUMMARY

Claimant alleges that he advised Respondent, Tom Byer ("Byer") that his investment objectives were to preserve capital by investing in no-risk securities and to receive a favorable return on his investment. Claimant alleges that Byer recommended Essex Financial Partners, L.P.

("Essex") and assured him that the investment was suitable given his stated objectives. Based on these and other representations made to him by Byer, Claimant alleges that he purchased shares of Essex. Claimant alleges that when the value of the investment began to decline, Byer assured him that the investment was not in jeopardy and Claimant purchased more shares based on these further assurances. Claimant alleges that the representations made to him by Byer were false and that he relied on those false representations in purchasing Essex.

Respondents maintain that the Claimant is an experienced investor and that his primary investment objective was to earn income. Respondents maintain that the Claimant chose to invest in Essex after all the risks were fully disclosed to him. Respondents maintain that they could only purchase a limited number of shares of Essex at a given price, and that Claimant purchased the additional shares of their own free will at another brokerage firm. Respondents maintain that Claimant also purchased additional shares from Byer as well. Respondents denied that Byer assured Claimant that Essex would achieve its investment objectives. Respondents maintain that Essex was suitable for the Claimant, given his stated investment objectives.

#### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$30,500, punitive damages in the amount of \$61,000, attorneys fees in the amount of \$7,500 and costs in the amount of \$500.

Respondents requested that the Claim be dismissed in its entirety with costs, including attorney's fees 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.

#### **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, PaineWebber, Inc. and Tom Byer are hereby jointly and severally liable and shall pay to the Claimant the sum of \$21,985.21 (TWENTY ONE THOUSAND NINE HUNDRED EIGHTY FIVE DOLLARS AND TWENTY ONE CENTS).
- 2) The Claim for punitive damages is hereby denied.

- 3) Each party shall bear their respective costs of this action, including attorney's fees.
- 4) Respondents, PaineWebber, Inc. and Tom Byer are hereby directed to reimburse to the Claimant the sum of \$650.00 (SIX HUNDRED FIFTY DOLLARS AND NO CENTS) that Claimant previously deposited with the NASD. Details are provided below.
- 5) All other claims and counterclaims, if any, are hereby denied.

**FORUM FEES**

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

\$150.00	Non-refundable filing fee
\$1,000.00	Hearing Session fees (\$500.00 x 2 sessions).

- 1) Total forum fees in the amount of \$1,150.00 are hereby assessed against the Respondents, PaineWebber, Inc and Tom Byer, jointly and severally.
- 2) As stated above, Respondents shall reimburse to the Claimant the sum of \$650.00.
- 3) Respondents are directed to pay the balance of \$500.00 to the NASD, Inc.

Concurring Arbitrator's Signature  
Name

Industry Arbitrator

  
Mary Ann Owen

Date of Decision: February 24, 1993

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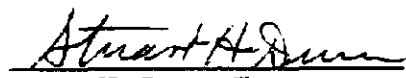
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Name

Public Chairperson

  
Stuart H. Dunn, Esq.

Date of Decision: February 24, 1993

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Name

Public Arbitrator

  
Ernestine M.R. Zipoy, Esq.

Date of Decision: February 24, 1993