

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Oliver T. and Eleanor N. Myers

PUBLIC

92-00458

Name of Respondent(s)

Shearson Lehman Brothers, Inc.
PaineWebber, Inc.
Cynthia Coxe
Joseph Kennedy, III.

REPRESENTATION

For Claimants: Julia Garver, Esq. of Woods, Oviatt, Gilman, Sturymann & Clarke.

For Respondents, Cynthia Coxe Mazzara, Joseph Kennedy, III and Paine Webber, Incorporated:
Edward Werner, Esq. of PaineWebber, Incorporated.

For Respondents, Shearson Lehman Brothers, Inc. and Cynthia Mazzara: William A. Hohausser,
Esq. of Shearson Lehman Brothers.

CASE HISTORY

Statement of Claim filed: January 31, 1992.

Claimants, Oliver T. Myers & Eleanor N. Myers' Submission Agreement signed on:
September 27, 1991.

Statement of Answer filed by Respondents, PaineWebber, Inc., Cynthia Coxe Mazzara and
Joseph Kennedy on: May 4, 1992.

Respondent, PaineWebber, Incorporated's Submission Agreement signed on: April 28, 1992.

Respondent, Joseph Kennedy, III's Submission Agreement signed on: May 29, 1992.

Statement of Answer of Shearson Lehman Brothers, Inc., & Cynthia Coxe Mazzara filed on: July 13, 1992.

Respondent, Shearson Lehman Brothers, Inc. did not provide a fully executed Submission Agreement.

Respondent, Cynthia Coxe Mazzara did not file an executed Submission Agreement.

HEARING INFORMATION

Hearing Dates/Sessions: August 26, 1992 / Two Sessions
August 27, 1992 / Three Sessions

Hearing Location: Hyatt Regency, Buffalo, New York.

CASE SUMMARY

Claimants alleged that they opened an account with Respondent, Cynthia Coxe Mazzara ("Mazzara") at Respondent, Shearson Lehman Brothers, Inc. ("Shearson") in Los Angeles, California. Claimants alleged that Mazzara invested their funds into risky speculative securities, notwithstanding their express desire for conservative, low risk investments. Claimants alleged Mazzara caused the account to be churned for her own benefit, and to the detriment of the Claimants. Claimants alleged that Shearson's Los Angeles office failed to properly supervise Mazzara.

Claimants alleged that they opened a new account with PaineWebber, Incorporated ("PaineWebber") in Beverly Hills, California when Mazzara transferred to PaineWebber. Claimants alleged that they transferred the proceeds of their Shearson account to PaineWebber.

Claimants alleged that Mazzara caused the account to be highly leveraged with margin. Claimants alleged that Mazzara churned their account. Claimants alleged that PaineWebber failed to adequately supervise Mazzara's activities within their account.

Claimants alleged that they opened an account with PaineWebber in Rochester, NY where their account representative was Joseph Kennedy ("Kennedy"). Claimants alleged that their California account was transferred to the NY account. Claimants alleged that Kennedy invested their funds in highly speculative securities and caused the leverage in the account to be increased. Claimants alleged that Kennedy caused the account to be churned for his gain. Claimants alleged that PaineWebber failed to adequately supervise Kennedy.

Respondents, PaineWebber, Cynthia Mazzara and Joseph Kennedy ("PaineWebber Respondents") maintained that Claimant, Oliver T. Myers ("Mr. Myers") understood, the concept of trading securities on margin. PaineWebber Respondents maintained that Mr. Myers called Mazzara repeatedly to request information. PaineWebber Respondents maintained that Mr. Myers was in full control of the accounts. PaineWebber Respondents denied that Claimants' accounts were churned. PaineWebber Respondents maintained that every trade was made after discussions between the Claimants and Mazzara. PaineWebber Respondents maintained that Mazzara suggested to Mr. Myers that he not margin his account more than it already was. PaineWebber Respondents maintained that Mr. Myers told Mazzara that he understood the risks involved by trading on margin.

PaineWebber Respondents alleged that Mr. Myers purchased speculative stocks against the recommendation of Mazzara. PaineWebber Respondents maintained that all investment decisions were made by Mr. Myers alone. PaineWebber Respondents maintained that these investments were not unsuitable for the Claimants who stated that they had substantial assets, and who claimed to be experienced in the securities markets.

Respondent, Shearson Lehman Brothers and Claimant settled their dispute. Claimants notified the NASD by letter dated August 25, 1992.

RELIEF REQUESTED

Claimants requested damages in the amount of \$122,331.00 plus interest from the time each account was closed; punitive and exemplary damages in an amount equal to three times the amount of the loss; interest attorneys' fees and costs.

PaineWebber Respondents requested that the claims be dismissed in its entirety with costs to be assessed against the Claimants.

OTHER ISSUES TO BE CONSIDERED

Pursuant to the by-laws of the NASD, the arbitrators determined that Cynthia Coxe Mazzara was required to submit to this arbitration, notwithstanding her failure to submit a signed Submission Agreement. Therefore, Mazzara is bound by this panel's rulings and determinations.

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) Respondent, PaineWebber is hereby liable and shall pay to the Claimant the amount of \$15,000.00 (Fifteen Thousand Dollars and 00/xx).
- 2) Respondent, Joseph Kennedy, III, is hereby liable and shall pay to the Claimant the amount of \$10,000.00 (Ten Thousand Dollars and 00/xx).
- 3) Respondent, Cynthia Coxe Mazzara, is hereby liable and shall pay to the Claimant the amount of \$5,000.00 (Five Thousand Dollars and 00/xx).
- 4) The claim for punitive damages is hereby denied.
- 5) Interest shall not accrue on the award unless payment in full is not made to the Claimants by December 15, 1992.

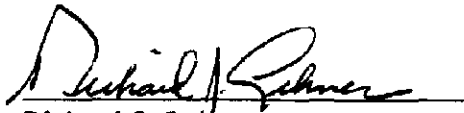
FORUM FEES

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

Non-refundable filing fee:	\$ 200.00
Hearing Sessions fees :	<u>\$3,750.00</u>
	\$3,950.00

- 1) Respondent PaineWebber, Inc. is hereby assessed one half of the forum fees in the amount of \$1,975.00. PaineWebber is directed to pay to the Claimants the amount of \$950.00 Claimant previously deposited with the NASD. PaineWebber is directed to pay the balance of \$1,025.00 to the NASD, Inc.
- 2) Respondent, Joseph Kennedy, III, is hereby assessed one third of the forum fees in the amount of \$1,316.66. Respondent, Kennedy shall pay the amount of \$1,316.66 to the NASD, Inc.
- 3) Respondent, Cynthia Cox, Mazzara is hereby assessed sixteen and 66/100 percent of the forum fees in the amount of \$658.33. Respondent, Mazzara, shall pay to the NASD, Inc. the amount of \$658.33.

ARBITRATION PANEL


Richard J. Lehner

Public/Chairperson

Date of Decision: November 23, 1992

STATE OF: NEW YORK

SS:

COUNTY OF: ERIE

On this 17th day of Nov. 19 92, before me personally appeared Richard Lehner to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Patricia A. Lehner

PATRICIA A. LEHNER
Notary Public, State of New York
Qualified in Erie County
Commission Expires February 28, 1993

- 1) Respondent PaineWebber, Inc. is hereby assessed one half of the forum fees in the amount of \$1,975.00. PaineWebber is directed to pay to the Claimants the amount of \$950.00 Claimant previously deposited with the NASD. PaineWebber is directed to pay the balance of \$1,025.00 to the NASD, Inc.
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- 3) Respondent, Cynthia Cox. Mazzara is hereby assessed sixteen and 66/100 percent of the forum fees in the amount of \$658.33. Respondent, Mazzara, shall pay to the NASD, Inc. the amount of \$658.33.

ARBITRATION PANEL


Anthony Vitanza

Industry Arbitrator

Date of Decision: November 21, 1992

STATE OF: *New York*

SS:

COUNTY OF: *Erie*

On this *18* day of *Nov.* 19*92*, before me personally appeared *ANTHONY V. TAVAZZ* to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Julianne Maxian

JULIANNE MAXIAN
Notary Public, State of New York
No. 52-3319380
Qualified in Erie County
Commission Expires August 21, 1993

- 1) Respondent PaineWebber, Inc. is hereby assessed one half of the forum fees in the amount of \$1,975.00. PaineWebber is directed to pay to the Claimants the amount of \$950.00 Claimant previously deposited with the NASD. PaineWebber is directed to pay the balance of \$1,025.00 to the NASD, Inc.
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- 3) Respondent, Cynthia Cox, Mazzara is hereby assessed sixteen and 66/100 percent of the forum fees in the amount of \$658.33. Respondent, Mazzara, shall pay to the NASD, Inc. the amount of \$658.33.

ARBITRATION PANEL


James G. Parker

Public Arbitrator

Date of Decision: November 21, 1992

STATE OF:

NEW YORK

SS:

COUNTY OF:

LIVINGSTON

On this *5th* day of *November* 19 *92*, before me personally
appeared *Tamara Perez* to me known and known before me to be
the individual described in and who executed the foregoing
instrument and he duly acknowledged to me that he executed
the same.

Letitia J. Rosenthal

LETITIA J. ROSENTHAL
Notary Public, State of New York
Livingston Co. No. 4897220
My Comm. Expires June 1, 19 *93*

11/18/92