

## 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

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In the Matter of the Arbitration BetweenName of Claimant

Susan L. Fitzsimmons, Individually, as  
Trustee for the Fitzsimmons Family Trust  
and as Administratrix of the Estate of  
Joseph T. Fitzsimmons, Jr.

vs.

Case #  
92-00582

Name of Respondents

PaineWebber, Inc.  
William Libby

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REPRESENTATION

For Claimant, Susan L. Fitzsimmons, Individually, as Trustee for the Fitzsimmons Family Trust and as Administratrix of the Estate of Joseph T. Fitzsimmons, Jr. ("Claimant"), Richard M. Gelb, Esq. from the law firm of Gelb and Gelb.

For Respondents, PaineWebber, Inc. ("PaineWebber") and William Libby ("Libby"), Edward Werner, Esq., in-house counsel with the law firm of PaineWebber, Inc.

CASE INFORMATION

Statement of Claim was filed on February 13, 1992.  
Claimant's Submission Agreement was signed on February 13, 1992.

Statement of Answer was filed by Respondents on May 4, 1992.  
PaineWebber's Submission Agreement was signed on June 15, 1992.  
Libby's Submission Agreement was signed on June 25, 1992.

HEARING INFORMATION

Pre-Hearing Conferences:  
July 31, 1992 - One session.

Hearing Date/Hearing Sessions:  
August 13, 1992 - Two sessions.

Hearing Location: National Association of Securities Dealers, Inc.'s offices  
located at 260 Franklin Street, Boston, Massachusetts.

#### CASE SUMMARY

Claimant alleged that PaineWebber and Libby committed the following wrongs: churning, unsuitable recommendations and transactions, misrepresentations and omissions, violations of federal and state law, breach of fiduciary duty, fraud, negligence, failure to supervise and enforce internal rules, aiding and abetting, and acting in concert. Specifically, Claimant alleged that Respondents were liable for the purchase of unsuitable securities for the Trust; that Respondent churned the Trust account for the purpose of generating commissions; and that PaineWebber failed to adequately supervise its registered representative, Libby, in accordance with its responsibility.

Respondent denied the allegations of wrongdoing and maintained that each of the transactions in the Trust account were authorized and directed by Nicholas Soutter ("Trustee"), the Trustee at the time of the transactions. Respondents also maintain that the account was not churned; that the then Trustee had full authority to determine suitability for all transactions in the Trust account and had full authority under the Trust Agreement to undertake such transactions. Respondents further asserted affirmative defenses, one of which are that the then Trustee was in sole control of the account and that Respondents thus could have no liability for claims of unsuitability or misrepresentation. Respondents also argue that the claims are barred by the applicable statute of limitations.

#### RELIEF REQUESTED

Claimant requested damages of \$83,612.67 for securities losses, commission charges and market adjusted losses, and unspecified punitive damages, interest and costs. Claimant also requested damages of \$30,000.00 against Libby for securities losses and unspecified punitive damages, interest and costs.

Respondents requested that the panel dismiss the claim and assess Claimant costs.

#### OTHER ISSUES CONSIDERED AND DECIDED

The parties stipulated to the execution and service of the award in counterpart copies.

#### AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, PaineWebber, Inc. and William Libby, are hereby jointly

and severally liable for and shall pay to Claimant the sum of SEVENTY THREE THOUSAND ONE HUNDRED AND NINE DOLLARS AND TWENTY SIX CENTS (\$73,109.26), representing \$54,651.95 in damages for speculative/high risk trading in an account for which speculation was not an investment objective and interest in the amount of \$18,457.31;

2. Claimant is directed to pay to Respondents any recovery received by the Trust as party to the class action In Re Home Shopping Network Securities Litigation - Action I, if and when received by the Trust;

3. Respondents' Motion to Dismiss the claim for damages with respect to South Ranch Trading Company is granted pursuant to Section 15 of the Code of Arbitration Procedure;

4. The claim for punitive damages is denied;

5. The parties shall each bear their respective costs including attorneys' fees.

FORUM FEES

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

1. Forum fees in the amount of \$2,300.00 for 1 pre-hearing conference at \$300.00 and 2 hearing sessions at \$1,000.00 per session are jointly and severally assessed against Respondents;

2. Respondents are further assessed \$250.00, the non-refundable filing fee;

3. Claimant deposited \$950.00.00 with the NASD;

4. Respondents shall satisfy the fees assessed by reimbursing Claimant \$950.00 and by remitting the balance, \$1,600.00, to the NASD.

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

Concurring Arbitrator's Signature

  
Gerard S. Marsan, Esq.  
Chairperson/Public

Date of Decision: September 24, 1992

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Susan S. Newton, Esq.  
Industry Panelist

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Concurring Arbitrator's Signature

  
Robert A. Derian  
Public Panelist

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