

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Hadwen C. Fuller, II

92-01097

Name of Respondents

PaineWebber, Inc.
Frederick Alesandro
Donald Walsh

REPRESENTATION

Claimant Hadwen C. Fuller, II ("Claimant"), Lorna G. Schofield, Esq. from the law firm of DeBevoise & Plimpton.

For Respondents, PaineWebber, Inc. ("PaineWebber"), Fred Allesandro ("Allesandro"), and Donald Walsh ("Walsh"), Sarah G. Anderson Esq., in-house counsel from the law firm of PaineWebber, Inc.

CASE INFORMATION

Statement of Claim filed was filed on March 26, 1992.

Amended Statement of Claim was filed on June 29, 1992.

Claimant Submission Agreement signed on March 23, 1992.

Joint Statement of Answer filed by Respondents PaineWebber, Allesandro and Walsh on June 10, 1992.

Joint Answer to Amended Statement of Claim was filed on August 19, 1992.

PaineWebber's Submission Agreement was signed on June 5, 1992.

Allesandro's Submission Agreement was signed on May 29, 1992.

Walsh's Submission Agreement was signed on June 2, 1992.

HEARING INFORMATION

Hearing Dates/Sessions:	October 28, 1992	-	Two Sessions
	October 29, 1992	-	Two Sessions
	November 18, 1992	-	Two Sessions
	November 19, 1992	-	Two Sessions
	December 14, 1992	-	One Session
	December 18, 1992	-	Two Sessions

Hearing Location: National Association of Securities Dealers, Inc.'s offices located at 33 Whitehall Street, New York City, New York.

CASE SUMMARY

Claimant states that in 1983, he founded Ontario Fuels Ltd. and in 1988 sold his 90% interest in Ontario Fuels to a wholly owned subsidiary of Triton Energy Co.

("Triton") in exchange for 469,102 shares of Triton common stock and 30,000 shares of Triton preferred stock. Claimant also states that after the sale he remained President of Ontario Fuels and as a result of his close association with Triton, and his belief that the Triton stock would grow, he intended to hold on to his shares. Claimant further states that he knew that if he sold the shares, he would receive only approximately sixty percent of the market value of Triton and would pay the remaining forty percent in taxes. Therefore, Claimant states that as long as he could obtain more than sixty percent of the market value by using the shares as collateral, he would do so.

Claimant maintains that he held on to the shares from October, 1988 to November, 1990 at Prudential Bache Securities, Inc. until that firm increased its margin requirement. Claimant alleges that Allesandro, who represented himself as a branch manager, met with Claimant and stated that if he moved his account to PaineWebber, he would be able to borrow seventy percent of the market value of his securities and promised that Paine Webber would not sell any stock without making a margin call and giving Claimant "ample opportunity 'one week' to post additional, collateral". Claimant alleges that this representation was to induce him to transfer his account to PaineWebber which included his 277,631 shares Triton preferred and common stock, 3,000 Cetas Common Stock and 1,000 shares of Tacoma Boatbuilding Inc. common

stock. Claimant further alleges that although he signed PaineWebber's Client Agreement regarding margin call, Allesandro said it was "pro forma" and reiterated that Claimant would have one week to meet a margin call.

Claimant alleges that on October 31, 1990 the price of Triton dropped and a margin call was issued. Claimant also alleges that on November 1, 1990 the price dropped even further and he called Allesandro who threatened to sell the Triton stock. Claimant contends that after further discussions with Allesandro and Robert Campi his registered representative, he promised to bring in whatever additional collateral was needed and eventually told Allesandro that he could bring in \$50,000.00 and an additional 100,000 shares of Triton, which he did. Claimant contends that Allesandro, nonetheless, wrongfully liquidated his 70,000 shares of Triton stocks and 3,000 shares of Cerus stock which resulted in a loss of \$3,390,439.00.

Respondents deny the allegations and deny liability. Respondents argues that there is no legal or equitable basis for this claim. Respondents maintain that they had a contractual right to act as they did and was required to take action to protect both PaineWebber and its client who had a highly-leveraged and concentrated account with a volatile security supporting a debit balance in excess of \$1,000,000.

Specifically, Respondents deny that they agreed to a thirty percent (30%) margin level, that Claimant was guaranteed that PaineWebber would not sell his stock "without making a margin call and that Claimant would have 'about a week' to post additional collateral. ...". Respondents contend that the 100,000 share of Triton plus cash which Claimant deposited into his account on November 1, 1990, were insufficient to meet the margin requirement even with the sale of the Triton stock already in his account. Respondents state that the Claimant was a relatively new customer and they were under no obligation to take him at his word that he would bring in the necessary cash or collateral.

Respondents also contend that they acted consistent with the Customer Agreement and they assert seven given legal defenses including the defense that there is no claim for punitive damages in that such damages are precluded by the facts and barred by applicable law. Respondents also argue that Claimant failed to mitigate his damages.

RELIEF REQUESTED

Claimant requests an award of \$3,390,439.00, or in the alternative, Claimant requests that Respondents be directed to return to him 70,000 shares of Triton common stock, 1,000 shares of Chiron Corp. common stock. Claimant also requests an award of exemplary damages in the

amount of \$1,609,561.00, attorney's fees and other costs incurred by Claimant in connection with this arbitration.

Respondents request dismissal of all claims against them, with costs to be taxed against Claimant, including reasonable attorney's fees incurred by Respondents in defending this unmeritorious claim.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that a handwritten, signed Award may be entered in this case. The parties have also agreed to receive a conformed copy of the Award while the original remain on file with the NASD.

During the course of the hearing Respondents moved to dismiss the claims against the individual Respondents. After hearing arguments from the parties, this panel granted the motion.

AWARD

After considering the pleadings, pre-hearing briefs, the testimony, the evidence presented at the hearing, Claimant's Memorandum of Law in reply to Respondent's brief on Alternative Damage Calculations and Respondents' post-hearing submission dated December 29, 1992, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. PaineWebber's motion to dismiss the claims are denied.
2. The claim for specific performance is denied.
3. The claim for punitive damages is denied.
4. The claim for attorneys fees is denied.
5. The claim for costs and expenses are denied.
6. PaineWebber's is hereby liable and shall pay Claimant FOUR HUNDRED AND FORTY SEVEN THOUSAND THREE HUNDRED AND TWELVE DOLLARS AND FIFTY CENTS (\$447,312.50).

7. The claim for interest is denied.
8. All other claims for relief are denied.

FORUM FEES

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

Non-refundable - Filing Fee: \$250.00.

Hearing Session Fees: \$1,000.00 x 11 sessions = \$11,000.00.

1. Forum fees shall be borne equally by the parties so that Claimant is assessed \$5,625.00 and PaineWebber is assessed \$5,625.00.

Claimant deposited \$1,250.00 and owes a balance of \$4,375.00.

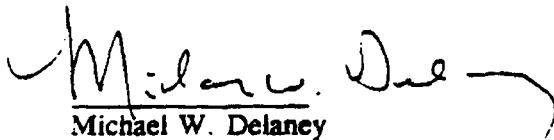
Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATION PANEL

Joseph Rafalowicz, Esq.	-	Public Chairperson	-
Michael W. Delaney	-	Public Panelist	
James J. Noone	-	Industry Arbitrator	

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Concurring Arbitrator's Signature

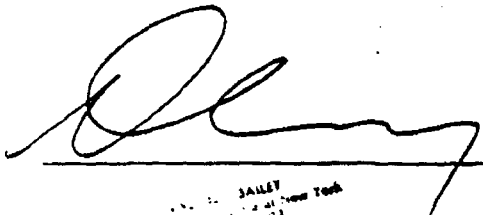
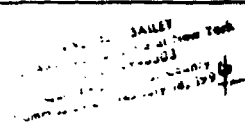

Michael W. Delaney

Date of Decision: February 17, 1993

STATE OF NEW YORK
COUNTY OF NY


S.S.:

On this 17th day of February, 1993, before me personally appeared Michael W. Delaney known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

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Concurring Arbitrator's Signature

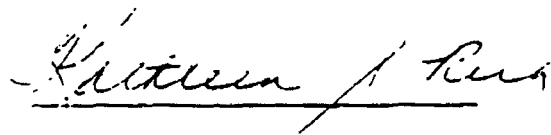

James J. Noone

Date of Decision: February 17, 1993

STATE OF NEW YORK
COUNTY OF

S.S:

On this // day of February, 1993, before me personally appeared James J. Noone known and
known to me to be the individual described in and who executed the foregoing instrument and
acknowledged to me that he executed the same.


Kathleen S. Ruh

KATHLEEN S. RUH
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES
JAN. 16 1998

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Concurring Arbitrator's Signature



Joseph Rafalowicz, Esq.

Date of Decision: February 17, 1993

STATE OF NEW YORK
COUNTY OF *New York*

S.S:

On this *9th* day of February, 1993, before me personally appeared Joseph Rafalowicz and known to me to be the individual described in and who executed the foregoing and be duly acknowledged to me that he executed the same.


NOTARY PUBLIC
STATE OF NEW YORK
COMMISSION EXPIRES
JANUARY 18, 1994