

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

**Name of Claimant**

Martha C. Kennedy

92-01285

**Name of Respondents**

PaineWebber, Inc.  
Jack Holdstein

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**REPRESENTATION**

For Claimant, Martha C. Kennedy ("Kennedy"): Robert J. Gill, Esq. of Isphording Korp Payne.

For Respondents, PaineWebber, Inc. ("P.W.") and Jack Holdstein ("Holdstein"): Steven M. Greenbaum, Esq. of PaineWebber, Inc.

**CASE INFORMATION**

Statement of Claim filed: 4/14/92.

Claimant's Submission Agreement signed on: 4/8/92.

A joint Statement of Answer filed by Respondents, P.W. and Holdstein on: 6/25/92.

Respondent, P.W.'s Submission Agreement and Corporate Acknowledgement signed on: 7/27/92 (by Patricia E. Cowart on behalf of the firm).

**HEARING INFORMATION**

Hearing Date/Sessions: 4/28/93-Two (2) sessions.

Hearing Location: Tampa, Florida.

### **CASE SUMMARY**

Claimant alleged that she is an unsophisticated investor and that when she opened her account at P.W. in May of 1986 with her husband, who is now deceased, they were both unsophisticated investors whose investment objectives were safety of principal, regularity of income, no risk or very low risk and liquidity, and that Respondent, Holdstein, their account executive at P.W. was advised of the foregoing. Claimant alleged that Respondents breached their fiduciary duty toward her by fraudulently inducing her to purchasing high risk, speculative and illiquid securities such as Ginnie Maes and junk bonds for her account which were not suitable in light of her stated investment objectives. Claimant stated that Respondents' actions also constituted federal and Florida securities acts violations, common law fraud, gross negligence and civil theft.

Respondents denied all allegations of wrongdoing and maintained that when Claimant opened her account that her investment objectives were high income and relative safety of principal and that based upon those objectives and Claimant's financial position Holdstein presented Claimant with a variety of investment alternatives from which Claimant chose two, the PaineWebber GNMA fund and the PaineWebber High Yield Fund. Respondents alleged that prior to purchase Claimant was fully apprised of the risks inherent in the investments they chose and that Claimant and her husband were provided with prospectuses on each investment. Respondents denied that the investments were unsuitable for Claimant or that they were falsely represented by Holdstein and stated that Claimant's losses were caused substantially by market forces and not by Respondents.

### **RELIEF REQUESTED**

Claimant requested actual damages of approximately \$30,265.00 plus treble damages, attorneys' fees and costs.

Respondents requested an award in their favor and against Claimant along with costs and reasonable attorneys' fees as allowed by law.

### **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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, P.W. and Holdstein, are found liable, jointly and severally, and shall pay to Claimant the amount of \$25,687.50 including interest.
2. Claimant's request for treble damages is hereby denied.
3. Claimant's request for attorneys' fees is hereby denied.
4. Respondents' request for attorneys fees is hereby denied.
5. All other claims are denied.

#### **OTHER COSTS**

The parties shall each bear their own costs incurred in connection with this proceeding.

#### **FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the panel has assessed forum fees of \$800.00 (two (2) hearing sessions X \$400.00).

1. Claimant is hereby assessed forum fees of \$400.00 for which the NASD shall retain the \$400.00 previously deposited by Claimant in full satisfaction thereof.
2. Respondents, P.W. and Holdstein, are jointly and severally assessed forum fees of \$400.00 payable to the NASD.
3. The NASD shall retain the non-refundable filing fee of \$120.00 paid by Claimant.

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

#### **ARBITRATION PANEL**

##### **Concurring Arbitrators' Signatures**

/s/  
George S. Coit, Jr., Esq.

Public/Chairman

/s/  
William G. Kline

Public/Panelist

/s/  
Michael N. Gonatos

Industry/Panelist

Date of Decision: June 29, 1993