

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Bernard L. Maizlish

92-01834

Name of Respondents

PaineWebber, Inc.  
Gerald M. Rashbaum

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REPRESENTATION

For Claimant Bernard L. Maizlish ("Claimant"): Frederick C. Leiner, Esq. of the law firm Tydings & Rosenberg

For Respondents PaineWebber, Inc. and Gerald M. Rashbaum ("Respondents"): Thomas M. Mierswa, Jr., Senior Litigation Counsel, PaineWebber, Inc.

CASE INFORMATION

Statement of Claim filed: June 1, 1992

Claimant's Submission Agreement signed on: May 7, 1992

Joint Statement of Answer filed by Respondents on: August 24, 1992

Respondent PaineWebber, Inc.'s ("PaineWebber") Submission Agreement signed on: September 30, 1992

Respondent Gerald M. Rashbaum's ("Rashbaum") Submission Agreement signed on: February 4, 1993

HEARING INFORMATION

Hearing Dates/Sessions: June 25, 1993 - hearing cancelled  
July 27, 1993 - two sessions

Hearing Location: Omni Inner Harbor Hotel, Baltimore, Maryland

**CASE SUMMARY**

Claimant alleged that Respondents were given authority to sell securities for the limited purpose of generating occasional year end tax losses to offset gains. Claimant alleged that Respondents had a duty to exercise care and prudence in handling Claimant's securities. Claimant alleged that Respondents sale of 4000 shares of Nova Pharmaceutical, Inc. ("Nova") despite their knowledge that Claimant did not need additional taxes losses in 1990 due to the losses Claimant had already sustained from the bankruptcy of Original Diet Pizza, Inc. was a breach of the duty of care Respondents owed to Claimant. Claimant alleged that he has been damaged by the negligent sale of Nova.

Respondents categorically denied all allegations of wrongdoing and specifically maintained that Claimant's account was properly handled. Respondents denied Claimant's allegations of negligence regarding the sale of Nova. Respondents maintained that said transaction was executed by Respondents pursuant to Claimant's instructions and authorization. Respondents maintained that they are not responsible for the alleged losses incurred by Claimant in respect to the sale of 4,000 Nova shares.

**RELIEF REQUESTED**

Claimant requested that Respondents purchase at their expense 4,000 shares of Nova for Claimant's account and to award Claimant his costs and expenses.

Respondents requested that Claimant's claim be dismissed in its entirety and that costs and fees, including reasonable attorney's fees, be awarded to Respondents.

**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 arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. That Claimant's claim is denied in its entirety.
2. That the parties shall bear their respective expenses except as specified herein.

**FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed:

$$2 \times \$600 = \$1,200$$

That Claimant is assessed costs for the two hearing sessions conducted in this matter. Claimant is assessed forum fees in the amount of \$1,200; however, he is entitled to offset this amount with his hearing session deposit of \$600 previously filed so that the amount due from Claimant is \$600.

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

Concurring Arbitrator's Signature

Name

W. Thomas Gehrt

Public/Industry

Industry

Date of Decision: ~~7/21/93~~

NASD Date of Decision: August 26, 1993

1. That Claimant's claim is denied in its entirety.
2. That the parties shall bear their respective expenses except as specified herein.

**FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed:

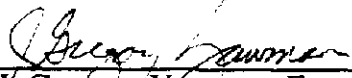
$$2 \times \$600 = \$1,200$$

That Claimant is assessed costs for the two hearing sessions conducted in this matter. Claimant is assessed forum fees in the amount of \$1,200; however, he is entitled to offset this amount with his hearing session deposit of \$600 previously filed so that the amount due from Claimant is \$600.

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

Concurring Arbitrator's Signature  
Name

Public/Industry

  
J. Gregory Yawman, Esq.

Date of Decision: ~~8/27/93~~

NASD Date of Decision: August 26, 1993

1. That Claimant's claim is denied in its entirety.
2. That the parties shall bear their respective expenses except as specified herein.

**FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed:

$$2 \times \$600 = \$1,200$$

That Claimant is assessed costs for the two hearing sessions conducted in this matter. Claimant is assessed forum fees in the amount of \$1,200; however, he is entitled to offset this amount with his hearing session deposit of \$600 previously filed so that the amount due from Claimant is \$600.

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

Concurring Arbitrator's Signature  
Name

David Freund  
David Freund

Public/Industry

Public

Date of Decision NASD Date of Decision  
August 26, 1993