

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Harold & Ann Stein as Trustees
for the Harold and Ann Stein
Revocable Living Trust

Case No. 92-01891

Name of Respondent(s)

PaineWebber, Inc.
Samuel Litt
Hank Martin
Philip Lubetkin

REPRESENTATION

Claimants, Harold and Ann Stein, as Trustees for the Harold and Ann Stein Revocable Living Trust ("the Steins"): Pro Se.

For Respondents, PaineWebber, Inc. ("PaineWebber"), Hank Martin ("Martin") and Philip Lubetkin ("Lubetkin"): Michael Alford, Esq. of PaineWebber.

Respondent, Samuel Litt ("Litt"): Pro Se.

CASE INFORMATION

Statement of Claim filed: June 5, 1992. Claimants' Submission Agreement signed: May 4, 1992.

Respondents, PaineWebber, Martin and Lubetkin's, Statement of Answer filed: August 3, 1992. Respondents' Submission Agreements signed: July 8, 1992 by Martin, and July 16, 1992 by Lebetkin, and on June 30, 1992 by Patricia Cowart on behalf of PaineWebber.

Respondent, Litt, did not file a Statement of Answer or sign a Submission Agreement as required by Sections 12 and 25 of the Code (see "Other Issues").

HEARING INFORMATION

On May 19, 1993 in Fort Lauderdale, Florida, a hearing lasting two sessions was conducted.

CASE SUMMARY

Claimants alleged that Respondents were liable for recommending to Claimants that they purchase a certain corporate income mutual fund without advising Claimants of the speculative nature of the investment. Claimants alleged that Respondents were merely interested in the high commissions involved from selling PaineWebber sponsored securities. Claimants alleged: breach of fiduciary duty; and, negligence.

Respondents, PaineWebber, Martin and Lubetkin, denied all allegations of wrongdoing and alleged that: Mr. Stein was a sophisticated and knowledgeable investor; Claimants received a prospectus and were advised of the risks; market conditions were responsible for any losses; and, Claimants were suitable for the investment.

Respondents, PaineWebber, Martin and Lubetkin, alleged the affirmative defenses of: failure to state a claim; statutes of limitations; ratification; estoppel; laches; good faith; failure to mitigate damages; lack of proximate cause; failure to timely complain; and, comparative negligence.

Respondent, Litt, failed to file an Answer and did not appear at the hearing.

RELIEF REQUESTED

Claimants requested damages in the approximate amount of \$14,000.

Respondents requested dismissal of the claim.

OTHER ISSUES CONSIDERED & DECIDED

1. At the conclusion of the hearing Claimant withdrew his claims against Lubetkin and, therefore, Lubetkin is hereby dismissed, with prejudice, from this matter.
2. This arbitrator finds that Respondent, Litt, was required to sign a Submission Agreement and to file a Statement of Answer pursuant to Section 12(a) of the NASD Code of Arbitration Procedure ("Code), Litt being a person associated with an NASD member firm, Prudential, at the time the facts giving rise to the controversy occurred.
3. Jurisdiction exists pursuant to Section 12 of the Code and pursuant to the Form U-4 executed by Litt.

4. For the reasons set forth in the record of proceedings and contained in Arbitrator's Exhibit #2, this arbitrator finds service upon and adequate notice to Litt. The NASD has made every attempt to locate and serve Litt with Notice of this hearing as demonstrated by the evidence contained in Arbitrator's Exhibit #2.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, and Litt neither appearing at the hearing nor requesting an adjournment thereof, the arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

Respondents, PaineWebber, Martin and Litt, are found not liable and, therefore, all claims against them are hereby dismissed.

OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrator has assessed forum fees in the amount of \$600 (two sessions x \$300 per session).
2. Claimants are hereby assessed \$300 for which the NASD shall retain the \$300 previously deposited in full satisfaction thereof.
3. Respondent, PaineWebber, is hereby assessed \$300 payable to the National Association of Securities Dealers, Inc.
4. The NASD shall retain the non-refundable filing fee of \$100 paid by the Claimants.

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

Concurring Arbitrator's Signature


Gary M. Landau, Esq.

Date of Decision: 6/22/93