

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

— Corinne Emmendorfer, as Trustee, U/W Ralph E. Emmendorfer, Decd.; Corinne Emmendorfer, as Trustee, FBO Corinne Emmendorfer, Trust dated September 14, 1990; Corinne Emmendorfer; Gary M. Fluchel; Chris D. Fluchel; and Jon B. Fluchel

92-01935

Name of Respondents

PaineWebber Incorporated; JW Charles Securities, Inc.; Clayton Securities Services, Inc.; Robert Lloyd Patrick; Grey, Randolph & Abbot Ltd.; OTRA Clearing Inc.; and Stifel, Nicolaus & Company, Incorporated.

REPRESENTATION

For Claimant: Corinne Emmendorfer, as Trustee, U/W Ralph E. Emmendorfer, Decd.; Corinne Emmendorfer, as Trustee, FBO Corinne Emmendorfer, Trust dated September 14, 1990; Corinne Emmendorfer; Gary M. Fluchel; Chris D. Fluchel; and Jon B. Fluchel ("Emmendorfer") were represented by Sherri C. Strand, Esq. of Moline & Shostak, located in St. Louis, Missouri.

For Respondent: PaineWebber Incorporated ("PaineWebber") was represented by Edward G. Werner, Esq. of PaineWebber Incorporated, Weehawken, New Jersey.

JW Charles Securities, Inc. ("JW Charles") was represented by Charles E. Scarlett, Esq. of Boca Raton, Florida.

Clayton Securities Services, Inc. ("Clayton Securities") was represented by E.G. Burton III, Esq., of Clayton, Missouri.

Robert Lloyd Patrick ("Patrick") did not file a submission agreement, a Statement of Answer or appear at hearing.

Grey, Randolph & Abbot Ltd. ("Grey Randolph") was represented by Michael S. Goodman.

OTRA Clearing Inc. ("OTRA") was represented by J. Gary McAllister, Esq. and Scott G. Monson, Esq. of Salt Lake City, Utah.

Stifel, Nicolaus & Company, Incorporated ("Stifel Nicolaus") was represented by Thomas E. Douglass, Esq. of Coburn, Croft & Putzell, located in St. Louis, Missouri.

CASE INFORMATION

Statement of Claim filed: June 9, 1992.

Submission Agreement of Claimant Corinne Emmendorfer, Trustee, U/W Ralph E. Emmendorfer, dtd. 6-13-78, Decd. signed on: June 23, 1992 by Corinne Emmendorfer.

Submission Agreement of Claimant Corinne Emmendorfer, Trustee, FBO Corinne Emmendorfer Trust, Dtd 9-14-90 signed on: June 23, 1992 by Corinne Emmendorfer.

Claimant Corinne Emmendorfer's Submission Agreement signed on: June 23, 1992.

Claimant Gary M. Fluchel's Submission Agreement signed on: May 29, 1992.

Claimant Chris D. Fluchel's Submissions Agreement signed on: May 29, 1992.

Claimant Jon B. Fluchel's Submission Agreement signed on: June 1, 1992.

Amendment to Statement of Claim filed: July 29, 1992.

Statement of Answer and Cross-Claim against Respondent Robert Lloyd Patrick filed by Respondent PaineWebber Incorporated on: October 29, 1992.

Respondent PaineWebber's Submission Agreement signed on: October 29, 1992 by Joseph F. Generelli, Managing Attorney and Corporate Vice President, PaineWebber Incorporated.

Statement of Answer filed by Respondent JW Charles Securities, Inc. on: September 30, 1992.
Respondent Charles Securities' Submission Agreement signed on: August 27, 1992 by Charles E. Scarlett, General Counsel, JW Charles Securities, Inc.

Statement of Answer, Motion for More Definite Statement, or in the alternative, Motion to Dismiss filed by Respondent Clayton Securities Services, Inc. on: October 1, 1992.

Respondent Clayton Securities did not file an executed Submission Agreement.

Claimants' Request to Amend Claim and Amended Statement of Claim filed April 2, 1993.

Respondent Grey, Randalf & Abbott, Inc. did not file an executed Submission Agreement or a Statement of Answer. A Motion to Dismiss Michael S. Goodman ("Goodman"), as Statutory Trustee for Gray, Randolf & Abbott, Ltd was filed May 10, 1993 after Claimants' Amended Claim naming Goodman was allowed to be filed by the arbitrators.

— Claimants' Response to Respondent Goodman's Motion to Dismiss filed: June 3, 1993.

Statement of Answer filed by Respondent OTRA Clearing Inc. on October 1, 1992.

Respondent OTRA's Submission Agreement signed on: October 1, 1992 by Scott G. Monson. Legal Counsel, OTRA Clearing Inc.

Statement of Answer filed by Respondent Stifel, Nicolaus & Company, Inc. on: September 29, 1992.

Respondent Stifel Nicolaus' Submission Agreement signed on: October 19, 1992 by Forrest M. Smith, Vice President, Stifel, Nicolaus & Company, Incorporated.

Claimants' Notice of Dismissal of Respondent Stifel Nicolaus & Company Incorporated filed on: January 11, 1993.

Claimants' Notice of Dismissal of Dismissal of Respondent PaineWebber Incorporated filed on: January 12, 1993.

Claimants' Notice of Dismissal of Respondents OTRA Clearing Inc. and JW Charles Securities, Inc. filed on: February 9, 1993.

HEARING INFORMATION

Pre-Hearing Conference: None Held.

Hearing Date/Sessions: November 17, 1993 for One (1) session.

Hearing Location: St. Louis, Missouri.

CASE SUMMARY

Claimants alleged that Respondent Patrick, while employed by or acting as an agent for Respondents PaineWebber, Clayton Securities, Grey Randolf, Stifel Nicolaus, OTRA, and

Charles Securities, purchased bonds for Claimants' accounts which were unsuitable given the specific instruction to invest in municipal bonds rated AAA. In addition, Claimants alleged that in 1989, while Patrick was with PaineWebber, he implemented a scheme to defraud Emmendorfer by charging her face value for zero coupon bonds and requesting that the checks be made payable to himself. This scheme continued for over three years while Patrick moved from PaineWebber to Grey Randolf to Clayton Securities. In April 1992, Emmendorfer learned that the zero coupon bonds were worth only a fraction of their face value that she had paid. Emmendorfer asserted claims for violation of the Rules of the NASD, breach of fiduciary duty and common law fraud.

Respondent PaineWebber denied the material allegations of the Statement of Claim, alleging that only six transactions were made by Emmendorfer while the account was at PaineWebber. The first four were bond transactions which resulted in a net gain of approximately several thousand dollars. The other two were purchases of PaineWebber Cash fund of Sikeston Bonds which transferred out of the account when Emmendorfer followed Patrick to his next employer. In addition, if Patrick took personal checks from the Claimant, his actions were clearly outside the scope of his employment in taking this money. Furthermore, PaineWebber asserted fourteen affirmative defenses, including the following:

1. The claim is barred by the applicable statute of limitations, the doctrines of estoppel, ratification and affirmance, and by the doctrine of assumption of risk;
2. The Statement of Claim failed to state a cause of action upon which relief can be granted; and
3. The injuries, if any, were caused by Claimant's conduct or by her failure to mitigate damages.

Respondent JW Charles denied any liability under the Statement of Claim, asserting that as a clearing broker dealer, it was not responsible for any losses in the account, and that Emmendorfer was aware of this because of a NYSE Rule 382 letter which was sent to Claimant when the account was opened at Clayton Securities.

Respondent Patrick did not file a Statement of Answer.

Respondent Clayton Securities denied the material allegations of the Statement of Claim, asserting that the Claim did not specify what actions Patrick had conducted while at Clayton Securities and it was impossible to identify any actions for which it may be responsible. In addition, Clayton Securities asserted several affirmative defenses, including:

1. Claimants have failed to state a claim upon which relief can be granted;

2. Claimants have waived any claim and are estopped from bringing any claim against Clayton Securities; and
3. Any acts of Patrick of which Claimants complain of were not within the scope and course of Patrick's employment.

Respondent Grey Randolph denied any liability, requesting dismissal because it withdrew its membership with the NASD in April 1991 and with the SEC in June 1991.

Respondent OTRA denied the material allegations of the Statement of Claim, alleging that OTRA was merely the clearing firm for the introducing broker, Respondent Grey Randolph, did not have direct contact with Claimants, and did not have any duty or obligation to investigate the validity or suitability of any transaction placed on Claimant's behalf by Grey Randolph. In addition, OTRA asserted several affirmative defenses and grounds for dismissal.

Respondent Stifel Nicolaus denied any liability as alleged in the Claimant's claim, asserting that all but one of the transactions complained of occurred after Patrick left the employ of Stifel Nicolaus, and that one transaction was the purchase of a Booneville, Missouri IDR Intertherm bond purchased on or about July 31, 1987 which was an appropriate, sound investment for Emmendorfer's account.

RELIEF REQUESTED

Claimant initially requested entry of an award for the initial principal amount paid on the bonds plus accrued interest on all the bond transactions, and all expenses incurred in arbitration. The relief request was later amended to an award of \$139,203.30 plus interest, attorneys' fees and any other damages. The final amendment to the claim reduced the actual damages requested to \$55,981.50 plus interest, punitive damages, reasonable attorneys' fees and costs to be awarded to Claimant from Respondent Patrick and damages of \$36,890.00 plus interest and attorneys' fees from Respondent Grey Randolph.

Respondent Painewebber requested that the matter be dismissed in its entirety with all costs being assessed against the Claimant.

Respondent JW Charles requested that the Panel dismiss this matter in its entirety.

Respondent Clayton Securities requested that any claim against it be dismissed.

Respondent Grey Randolph requested that the claims against it be dismissed.

Respondent OTRA requested that any and all claims against it be dismissed summarily, and for an order that Claimant shall take nothing as to OTRA by its Statement of Claim, and that Claimant reimburse OTRA for its costs, expenses and reasonable attorneys' fees incurred in defending itself.

Respondent Stifel Nicolaus requested dismissal of the matter.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Robert Lloyd Patrick did not file an executed submission agreement or a Statement of Answer, but is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure. Upon review, the Panel finds that Respondent Patrick was properly served with the Statement of Claim pursuant to Section 25 of the NASD Code of Arbitration Procedure ("Code") and was properly served with Notice of the Hearing pursuant to Section 26 of the Code. Respondent Patrick did not appear at hearing. Upon review of the above findings and Section 29 of the NASD Code of Arbitration Procedure, the Panel determined that the arbitration of the controversy would proceed.

On January 11, 1993, Claimants notified the NASD of the dismissal of all claims against Respondent Stifel Nicolaus & Co., Inc.

On January 12, 1993, Claimants notified the NASD of the dismissal of all claims against Respondent PaineWebber Incorporated.

On February 9, 1993, Claimants notified the NASD of the Dismissal of all claims against Respondents Otra Clearing Corporation and JW Charles Securities, Inc. On the same date, Respondent Otra Clearing, Inc. dismissed all claims against Claimant Corinne Emmendorfer and notified the NASD.

On June 22, 1993, Respondent Goodman's Motion to Dismiss was denied by the Panel after review of the Motion and all Responses.

Prior to hearing on November 17, 1993, Claimant dismissed Respondents Clayton Securities Services, Inc., Michael S. Goodman, as Statutory Trustee of Grey, Randolph & Abbot, Ltd., and Grey, Randolph & Abbot, Ltd. The dismissals were entered into the record at hearing on November 17, 1993.

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. Respondent Robert Lloyd Patrick is liable for and shall pay to Claimants Corinne Emmendorfer, as Trustee, U/W Ralph E. Emmendorfer, Decd.; Corinne Emmendorfer, as Trustee, FBO Corinne Emmendorfer, Trust dated September 14, 1990; Corinne Emmendorfer; Gary M. Fluchel; Chris D. Fluchel; and John Fluchel, the sum of \$55,981.50 in actual damages, plus 9% interest per annum from February 23, 1993 until said award is paid;
2. In addition, Respondent Robert Lloyd Patrick is liable for and shall pay to the above Claimants the sum of \$150,000.00 in punitive damages. In determining to award punitive damages, the Panel considered the arguments presented by the Claimants, as well as Missouri law, and determined that authority existed for the awarding of punitive damages to the Claimants;
3. Furthermore, Respondent Robert Lloyd Patrick is liable for and shall pay to the above Claimants the sum of \$25,000.00 as attorneys' fees. In determining to award attorneys' fees, the Panel considered the arguments presented by the parties as well as Missouri law, and determined that authority existed for an award of attorneys' fees to the Claimants from the Respondent, Robert Lloyd Patrick;
4. All other costs of arbitration, including attorneys fees, shall be borne by the party incurring the cost, except for those specifically enumerated herein;
5. Respondents PaineWebber Incorporated; J.W. Charles Securities, Inc.; Clayton Securities Services, Inc.; Michael S. Goodman, as Statutory Trustee of Grey, Randolph & Abbot, Ltd.; Grey, Randolph & Abbot Ltd.; OTRA Clearing Corporation; and Stifel, Nicolaus & Co., Inc. are dismissed from this arbitration pursuant to the Claimants representations; and
6. All relief not specifically granted is hereby denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) hearing session x \$750.00 per session = \$750.00.

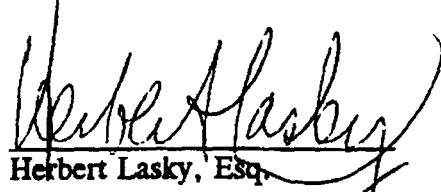
The National Association of Securities Dealers, Inc. shall retain the \$200.00 claim filing fee and refund the \$750.00 hearing session deposit previously deposited by the Claimants. Respondent Robert Lloyd Patrick is liable for and shall pay to the NASD forum fees in the sum of \$750.00.

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


Concurring Arbitrators' Signatures

Name


Date


Herbert Lasky, Esq.
Public Arbitrator
Chairperson

8/27/94


Paul S. Kuelthau, Esq.
Public Arbitrator

Sept 19, 1994


Thomas C. Boersig, Esq.
Industry Arbitrator

8/21/94

For NASD Use Only

Date of Service of Award: 9-29-94