

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Grace Z. Ash Revocable Trust  
William J. Ash, Jr. Revocable Trust  
Russell P. Kramer, Jr. Trustee

and

92-01936

Name of Respondents

PaineWebber, Inc.  
Timothy Hager

REPRESENTATION OF PARTIES

Claimant was represented by William D. Nelson, Esq. of Robinson, Waters, O'Dorisio and Rapson, P.C., Denver, Colorado.

Respondents were represented by Paul G. Thomas, Esq. of PaineWebber, Inc., Weehawken, New Jersey.

CASE INFORMATION

The Statement of Claim was filed on or about June 9, 1992. Submission Agreement of Claimant Grace Z. Ash Revocable Trust William J. Ash, Jr. Revocable Trust Russell P. Kramer, Jr. Trustee was signed by Russell P. Kramer, Jr. on May 27, 1992.

Statement of Answer was filed by Respondents PaineWebber, Inc. and Timothy Hager on or about October 12, 1992. Submission Agreement of Respondent PaineWebber, Inc. was signed on October 9, 1992 by Romaine Gardner.

HEARING INFORMATION

The hearing was held on Thursday, January 21, 1993 for one (1) session and Friday, January 22, 1993 for two (2) sessions in Denver, Colorado for a total of three (3) sessions.

CASE SUMMARY

Claimant alleged that respondents PaineWebber, Inc. and Timothy Hager (collectively as

"Respondents") violated section 10(b) of the Securities Exchange Act of 1934 and Rule 10(b)5 promulgated thereunder; violated the Colorado Securities Act; were negligent and breached their duty of care in making unauthorized trades and purchased unsuitable investments; that Respondent PaineWebber, Inc. was negligent in failing to supervise Respondent Hager; breached their fiduciary duty by disregarding Claimants' needs and instructions by making unauthorized trades, making unsuitable high risk investments, charging excessive commissions, making misrepresentations and failing to disclose material facts; and that the conduct of Respondents entitled the Claimants to appropriate exemplary damages. Claimant specifically alleged that the Respondents purchased units of PaineWebber Preferred Yield and PaineWebber Geodyne, limited partnerships, and co-mingled assets of the trusts.

In their Answer, Respondents stated that the purchase of PaineWebber Preferred Yield Fund was made at the request of Mr. Ash after Respondent Hager advised Mr. Ash to invest only \$25,000.00 instead of \$100,000.00. Respondents also stated that the authorization forms were sent to Mr. Ash and returned with what appeared to be Mr. Kramer's signature. With regard to the allegations of an unauthorized transfer of funds between accounts, Respondents stated that the transfer was carried out at the express request of Mr. Ash and Mr. Kramer. Respondents further responded to the allegations regarding the purchase of PaineWebber Geodyne Energy Partners Program III-F by stating that the purchase was made at the request of Mr. Ash and that Mr. Kramer had knowledge of the trade. Finally, Respondents stated that all transfers were made with the proper authorization forms executed and denied the allegations of forgery.

Respondents also asserted the following affirmative defenses: claimants fail to state a claim against respondents for which relief may be granted; respondents acted in good faith and did not knowingly or intentionally violate any applicable laws or standards; failure to mitigate; the claims are barred in whole or in part by the doctrines of ratification, estoppel, waiver and laches; the alleged losses were proximately caused by their own conduct or negligence in relation to the transactions complained of by them and, therefore, claimants are precluded from recovery; claimants alleged losses were not proximately caused by any alleged misconduct or respondents and claimants are, therefore precluded from recovery; any alleged damages were caused or contributed to by persons, conditions or events beyond the control of respondents and respondents are not liable therefore; and the claims are barred in whole or in part by the applicable statute(s) of limitations.

#### **RELIEF REQUESTED**

Claimant requested an award of actual losses in such amount as may be proven at the hearing and which exceed \$110,000.00, other out-of-pocket damages including accountant's fees, interest and all costs of this proceeding including filing fees, forum fees and attorney's fees, and reasonable exemplary damages.

Respondents requested that the claims be denied.

**OTHER ISSUES CONSIDERED & DECIDED**

Respondent Timothy Hager did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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 original(s) 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 PaineWebber, Inc. and Timothy Hager shall be and hereby are jointly and severally liable for and shall pay to the Claimant Grace Z. Ash Revocable Trust the sum of \$9,000.00 (nine thousand dollars) less any distributions received by the trust from the PaineWebber Preferred High Yield Fund.
2. Interest at the statutory rate of 8% per annum is awarded on the above stated sum from and inclusive of June 22, 1990 to and inclusive of the date this sum is paid in full. Interest is awarded in accordance with the provisions of the Colorado Securities Act.
3. Respondents PaineWebber, Inc. and Timothy Hager shall be and hereby are jointly and severally liable for and shall pay to the Claimant William J. Ash, Jr. Revocable Trust the sum of \$100,000.00 (one hundred thousand dollars) less any distributions received from PaineWebber Geodyne Energy Partners Program III-F. Upon receipt of the sums set forth herein, Claimant will transfer title of its shares of PaineWebber Geodyne Energy Partners Program III-F to the Respondents.
4. Interest at the statutory rate of 8% per annum is awarded on the above stated sum from and inclusive of November 29, 1990 to and inclusive of the date this sum is paid in full. Interest is awarded in accordance with the provisions of the Colorado Securities Act.
5. Respondents PaineWebber, Inc. and Timothy Hager shall be and hereby are jointly and severally liable for and shall pay to Claimants Grace Z. Ash

Revocable Trust and William J. Ash, Jr. Revocable Trust attorney's fees and costs. Unless a sum is agreed to between the parties, Claimant's attorney is to submit an affidavit of fees and costs within 7 (seven) days of receipt of this award to the NASD. Respondents' attorney will then submit his response within 14 days of receipt of this award to the NASD. The submissions of the parties will then be forwarded to the panel for its review and consideration. Attorney's fees and costs are awarded in accordance with the Colorado Securities Act.

6. No punitive damages are awarded herein.

### FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$200.00 and shall retain as forum fees the hearing session deposit in the amount of \$750.00 previously deposited with the NASD by the Claimant. Respondents PaineWebber, Inc. and Timothy Hager shall be and hereby are jointly and severally liable for and shall pay to the NASD the sum of \$1,500.00 as additional forum fees. Respondents are also directed to reimburse to Claimants the sum of \$750.00 previously deposited with the NASD.

Forum fees are calculated at the rate of \$750.00 per hearing session and \$300.00 for each prehearing conference, if any. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

s/ Dennis R. Frohlich, Esq.  
Dennis R. Frohlich, Esq.  
Public Arbitrator, Presiding Chair

January 28, 1993

s/ Rhonda L. Rhodes, Esq.  
Rhonda L. Rhodes, Esq.  
Public Arbitrator

January 30, 1993

s/ John D. McKenna  
John D. McKenna  
Industry Arbitrator

January 28, 1993

N.A.S.D. DISCIPLINARY REFERRAL

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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Timothy Hager

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REPORT OF ARBITRATORS

During the course of the hearing of this matter, the undersigned arbitrators became aware of certain delays in production of documents by Respondents. The undersigned arbitrators submit this matter for review by the appropriate District Business Conduct Committee to investigate the handling of requests for documents by Respondent PaineWebber, Inc.

Dated:

s/ Dennis R. Frohlich, Esq.  
Dennis R. Frohlich, Esq.  
Public Arbitrator, Presiding Chair

January 28, 1993

s/ Rhonda L. Rhodes, Esq.  
Rhonda L. Rhodes, Esq.  
Public Arbitrator

January 30, 1993

s/ John D. McKenna  
John D. McKenna  
Industry Arbitrator

January 28, 1993