

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Edwana Corley and Gayle Corley Hardy

92-02523

Name of Respondents

PaineWebber Incorporated;
John Decker;
Marvin Griffin, Jr.

REPRESENTATION

For Claimants: Edwana Corley and Gayle Corley Hardy were represented by Edwana Corley.

For Respondents: PaineWebber Incorporated, John Decker and Marvin Griffin, Jr. were represented by Evan Charkes, Esq. of PaineWebber Incorporated, Weehawken, New Jersey.

CASE INFORMATION

Statement of Claim filed: July 31, 1992.

Claimants' Submission Agreement signed on: July 27, 1992.

Joint Statement of Answer filed by Respondents PaineWebber Incorporated, John Decker and Marvin Griffin, Jr. on: October 6, 1992.

Respondent PaineWebber Incorporated's Submission Agreement signed on: October 7, 1992 by Romaine L. Gardner, Litigation Counsel and Corporate Vice President, PaineWebber Incorporated.

Respondent John Decker's Submission Agreement signed on: September 18, 1992.

Respondent Marvin Griffin, Jr.'s Submission Agreement signed on: September 15, 1992.

HEARING INFORMATION

Pre-Hearing Conference: None Held.

Hearing Dates/Sessions: February 25, 1993 for Two (2) sessions;
February 26, 1993 for Two (2) sessions.

Hearing Location: Houston, Texas.

CASE SUMMARY

Edwana Corley ("Corley") and Gayle Corley Hardy ("Hardy") maintained three accounts with Respondent PaineWebber Incorporated ("PaineWebber"); the Corley and Hardy Joint Tenant Account; Corley's IRA; and Hardy's IRA. Corley and Hardy alleged that Respondent Marvin Griffin, Jr. ("Griffin") made an unauthorized sale of Home Depot Stock held in the three accounts. The Claimants specifically alleged that:

1. At approximately 8:15 a.m. on August 19, 1991, Griffin called Corley, suggesting they sell the Home Depot Stock held in all three accounts. Corley questioned why sell now when the stock was at 50 1/2 when she had paid 52 3/4 for 50 shares bought the week before;
2. Griffin advised her to keep the 50 shares bought the week before and sell the rest because the market was going to go crazy and Corley should protect the accounts' profits;
3. Based upon this information, Corley authorized the sale of 700 shares from the Joint Tenant Account and all 585 shares held in the Corley IRA. Corley immediately called Hardy, advised her of the recommendation, then called Griffin back and authorized him to sell all 412 shares of Home Depot from the Hardy IRA;
4. Approximately one-half hour after her last call to Griffin, Corley called and authorized the sale of 69 more shares of Home Depot from the Joint Tenant Account, retaining only the 50 shares purchased the previous week;
5. Corley heard nothing about the sale until she called the PaineWebber office between 11:00 a.m. and noon the same day. At that time, Griffin's aide advised her that the Home Depot shares had sold at 45 1/4. Corley told the aide that the shares should never have sold for less than the 50 1/2 discussed by Griffin and herself;
6. The shares of the Home Depot sold out of the Hardy IRA were repurchased on August 21, 1991 to the limit of funds received from sale, in order to avoid any further losses;

7. The proceeds from the sale were deposited in the respective PaineWebber Cash Fund accounts when Corley realized that PaineWebber would not reinstate the stocks into all three accounts in the quantity prior to the sale of August 19, 1991. The proceeds were reinvested on December 31, 1991 at a purchase price of 69 1/4.

Claimants asserted that Respondent John Decker ("Decker") failed to adequately supervise Griffin and failed to respond adequately to the Claimant's complaints.

Respondents PaineWebber, Griffin, and Decker denied the material allegations of the Statement of Claim, alleging that:

1. Corley authorized the sale of the three positions in the stock upon the recommendation of Griffin and assented to the sales at market;
2. Corley was told about the executor price approximately one-half hour after the orders were entered and authorized the sale of an additional 69 shares;
3. On August 21, 1991, Hardy instructed Griffin to repurchase 340 shares of Home Depot in her account. The same day, Corley called to complain about the commissions charged and PaineWebber agreed to reduce the commissions by 30%. Griffin informed her of Hardy's repurchase, but Corley advised him that she wanted to spend more time studying the situation;
4. On August 23, 1991, Corley complained to Griffin in a letter that the sales were consummated at a price lower than the purchase price, but contained no information that she had instructed Griffin to not sell at a price lower than the purchase price.

Respondent asserted numerous affirmative defenses, including:

1. Claimants' failed to state a claim upon which relief could be granted;
2. Respondents acted in good faith in compliance with all applicable rules and regulations;
3. There is no causal relationship between Claimants' damages and Respondents' acts;

4. The claims are barred by the doctrines of estoppel, ratification, assumption of risk, waiver, laches., and by the applicable statute of limitations; and.
5. The injuries were caused by Claimants' conduct and failure to mitigate.

RELIEF REQUESTED

Claimants requested that Respondents repurchase for the accounts approximately 2,195 shares of the Home Depot stock, representing 730.5 total shares lost times triple damages. In addition, Claimants requested entry of an award of \$193.19 for dividends lost representing actual damages of \$64.40 times treble damages; and punitive damages.

Respondents requested that the Statement of Claim be dismissed in total and that the costs of the proceedings be assessed against the Claimants.

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 PaineWebber Incorporated and Marvin Griffin, Jr. are jointly and severally liable for and shall pay to Claimants Edwana Corley and Gayle Corley Hardy the sum of \$918.75 for actual damages incurred in the Edwana Corley and Gayle Corley Hardy Joint Tenant Account;
2. In addition, Respondents PaineWebber Incorporated and Marvin Griffin, Jr. are jointly and severally liable for and shall pay to Claimant Edwana Corley the sum of \$1,548.75 for actual damages incurred in the Edwana Corley IRA Account;
3. The claims asserted against Respondent John Decker are hereby dismissed with prejudice and denied in their entirety;

4. The claims asserted for punitive damages and treble damages are dismissed with prejudice and denied in their entirety;
5. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed: Four (4) hearing sessions x \$650.00 per session = \$2,600.00.

The National Association of Securities Dealers, Inc. shall retain the \$250.00 claim filing fee and the \$400.00 hearing session deposit previously deposited by the Claimants, Edwana Corley and Gayle Corley Hardy. Claimants Edwana Corley and Gayle C. Hardy are jointly and severally liable for and shall pay to the NASD additional forum fees in the sum of \$900.00. Respondents PaineWebber Incorporated, Marvin Griffin, Jr. and John Decker are jointly and severally liable for and shall pay to the NASD the sum of \$1,300.00 as forum fees.

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

Concurring Arbitrators' Signatures

Name

Date

Judith A. Swinney, Esq.
Judith A. Swinney, Esq.
Public Arbitrator
Chairperson

June 7, 1993

June 7, 1993

June 8, 1993
