

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Linda C. Zemel

vs.

Case #  
92-02946

Name of Respondents

PaineWebber, Inc.  
Steven Ewanowski

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**REPRESENTATION**

Claimant, Linda C. Zemel, appeared without counsel.

For Respondents, PaineWebber, Inc. ("PaineWebber") and Steven Ewanowski "(Ewanowski)", Edward P. Degenhardt, in-house counsel at PaineWebber.

**CASE INFORMATION**

Statement of Claim was filed on August 31, 1992.

Claimant's Submission Agreement was signed on August 27, 1992.

Statement of Answer was filed by Respondents PaineWebber and Ewanowski on September 21, 1992.

PaineWebber, Inc.'s Submission Agreement was signed on September 25, 1992.

Steven Ewanowski Submission's Agreement was signed on November 20, 1992.

**HEARING INFORMATION**

Hearing Date/Sessions: June 2, 1993 - Two Sessions

Hearing Location: NASD offices located at 260 Franklin Street, Boston, Massachusetts.

### **CASE SUMMARY**

Claimant alleges that when she discovered that she was about to lose her job as editor of a small bi-weekly newspaper, she left her discount broker and contacted Ewanowski with the hope that he could help her make enough money to replace her income. Claimant alleges that on the advice of Ewanowski she purchased 425 shares of Microdyne at 11.62 per share. Claimant also alleges that she told Ewanowski of her job situation and her hopes of making \$2000.00 in profit per month and he advised her that it was feasible, but that she should take bigger stakes in order to achieve her objective. Claimant states that Ewanowski did not obtain a profile on her.

Claimant further alleges that at Ewanowski's suggestion she purchased another 400 shares of Microdyne at 12, 275 shares of Immungen at 18 and 250 shares of Hologres at 11. Claimant contends that Ewanowski did not advise her that PaineWebber was a market maker in the securities. Claimant states that as a result of Respondent's failure to do research on some stocks she proposed, she instructed him to sell her 425 shares of Microdyne and transfer her account back to Quick and Reilly. Claimant also alleges that the sale and the transfer of her account was not done in a timely manner, she sustained damages in the lost opportunity for reinvestment of her funds.

Respondents allege that at the time Claimant was referred to Ewanowski, she explained that she was an aggressive trader of lower-priced, over-the counter stocks. Respondents deny that Claimant told Ewanowski that she was going to lose her job. Further, Respondents allege that Ewanowski informed Claimant that PaineWebber was a market maker in every over-the-counter stock that he trades.

Respondents also allege that, in response to Claimant's request for stocks that he liked, Ewanowski recommended several companies consistent with her investment objectives, including Microdyne and Immungen. Respondents allege that Ewanowski suggested Claimant wait to review the reports before making a decision on his recommendations, but Claimant directed Ewanowski to open a new account over the phone and purchase \$5,000.00 worth of both Microdyne and Immungen for the account.

### **RELIEF REQUESTED**

Claimant requests actual and compensatory damages in the amount of \$3,063.50, plus \$800.00 in commissions paid, punitive damages in the amount of \$4,000.00, and \$2,000.00 for lost opportunity.

Respondents request that the claim be dismissed in its entirety and costs be assessed against the Claimant.

**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. The Respondents be and hereby are liable, jointly and severally, and shall pay to the Claimant the sum of **ONE THOUSAND DOLLARS AND ZERO CENT (\$1,000.00)**, inclusive of interest.
2. All other claims are denied.
3. Claimant request for punitive damages is denied .
4. Each party shall bear its own expenses, including attorney's fees.
5. Respondents are jointly and severally liable to Claimant and shall refund Claimant \$37.50 as stated in number 1 of the Forum Fees Section of this decision.

**FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed equally against both parties.

Non-refundable filing fee:     \$75.00  
Hearing session fees:         \$200.00 (2 sessions x \$200.00) = \$400.00.

1. Respondents be and hereby are liable jointly and severally are assessed \$237.50 and shall pay to the NASD the amount of \$200.00 and refund Claimant \$37.50.
2. The NASD shall retain the filing fee previously deposited by the Claimant.

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

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**Arbitrator's Signature**

Name

Public Chairperson

**Mark J. Levinson, Esq.**

Date of Decision: July 1, 1993