

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Names of Claimants

Charles M. and Carolyn S. Hill

92-03436

Names of Respondents

PaineWebber, Inc.
William David Wade

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on October 8, 1992 and Amendment to the Statement of Claim filed on November 25, 1992. Claimants, Charles M. and Carolyn S. Hill ("Hill") who appeared Pro Se alleged that the Respondents, PaineWebber, Inc. ("PaineWebber") and William David Wade ("Wade") made misrepresentations concerning investments made in PaineWebber's GNMA Fund ("GNMA"), the Investment Grade Bond Fund ("Investment Grade") and the High Yield Bond Fund ("High Yield"). As alleged by the Hills, Mr. Wade stated that the interest in these investments would fluctuate yet the principal could be redeemed after twelve months without a loss to the principal investment amounts, that the funds were one hundred percent guaranteed by PaineWebber and that Mr. Hill was told to forget the prospectus.

On November 25, 1987, Mr. Hill alleged that he spoke with Mr. Wade and requested the redemption of the investments made in the GNMA Bond Fund totaling \$40,000.00 and in the Investment Grade Bond Fund totaling \$40,000.00, both investments which had been held for twelve months, and that he informed Mr. Wade that he planned to redeem the investment in the High Yield Bond Fund after the conclusion of the twelve month time period. On the following Monday, Mr. Hill went to the PaineWebber office in order to obtain the check for \$80,000.00 and Mr. Wade allegedly asked Mr. Hill to consider leaving the \$40,000.00 in the Investment Grade Fund for awhile longer until the fund recovered from a fall in price over the weekend. Mr. Hill agreed. Mr. Hill allegedly was told that there was no loss in redeeming the GNMA Funds and received two checks totaling the \$40,000.00 invested in GNMA, one check from

PaineWebber in the amount of \$35,201.18 and a cashiers check in the amount of \$4,798.82 showing PaineWebber as the purchaser. As alleged, Mr. Wade admitted that he had purchased the cashiers check, not PaineWebber, in order to fulfill his guarantee to the Claimants and not to arouse the Claimant's suspicion of any wrongdoing. On June 11, 1991, Mr. Hill redeemed the Investment Grade funds and the High Yield funds for losses in principal of \$4,864.86 and \$6,923.08, respectively. Mr. Hill further alleged that on June 24, 1991 he met with Mr. Wade who did not deny making the guarantee and who stated the guarantee was made to other persons due to his assumption that the funds were guaranteed by PaineWebber, Inc.

Respondent, PaineWebber, by and through their in-house counsel Elyse A. Adrian, Esq., maintained that it did not make a guarantee as to the value of the principal investment and should not be held responsible for a loss in the principal value. PaineWebber contends that the Hills were aware of the risks involved in the Investment Grade and High Yield Funds based on their receipt of the prospectuses, monthly statements and the PaineWebber Statement for Tax Year 1987 which showed the net proceeds on the sale of the GNMA to be \$35,201.18. PaineWebber further maintained that all of the transactions were made pursuant to the Claimants' instructions and with their authorization, that the investments were suitable for the account and that the Hills failed to account for dividends and capital gains. PaineWebber asserted eleven affirmative defenses.

Respondent, Wade who appeared Pro Se denied making the alleged guarantee to Mr. Hill and maintained that he did state the GNMA Fund invested in GNMA bonds which were guaranteed by the full faith and credit of the U. S. Government. Wade maintained he was innocent of any wrongdoing and asserted eleven affirmative defenses. Jah

RELIEF REQUESTED

Claimants, Charles M. and Carolyn S. Hill requested \$10,000.00 in actual damages plus interest at the rate of 7% from the date of June 18, 1991 until the date of payment and the costs of arbitration.

Respondents, PaineWebber, Inc. and William David Wade requested the claim be dismissed with prejudice and costs for defense of the claim assessed against the Claimants.

OTHER ISSUES

In the Claimants' Statement of Claim, they requested relief in the amount of \$11,787.94 for actual damages. The Claimants filed an Amended Statement of Claim on January 25, 1993 in which the relief requested was lowered to \$10,000.00 plus interest and costs of arbitration so that the case would proceed without a hearing and as a Simplified Arbitration under Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Thomas A. Harris, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitrations signed by the Claimants on October 6, 1992, by the Respondent PaineWebber, Inc., by and through Sarah Anderson, Esq., First Vice President and Associate General Counsel, on December 17, 1992 and by the Respondent William David Wade on December 1, 1992.

The Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents, PaineWebber, Inc. and William David Wade are jointly and severally liable and shall pay to the Claimants Charles M. and Carolyn S. Hill actual damages in the amount of \$10,000.00.

2. Respondents, PaineWebber, Inc. and William David Wade are jointly and severally liable and shall pay to the Claimants Charles M. and Carolyn S. Hill interest at a rate of 5% per annum from June 18, 1991 until the date the award is paid.

3. Respondents, PaineWebber, Inc. and William David Wade are jointly and severally liable and shall pay to the National Association of Securities Dealers, Inc. forum fees in the amount of \$75.00. The \$75.00 nonrefundable claim filing fee previously deposited by the Claimants with the National Association of Securities Dealers, Inc. shall be retained and the \$325.00 hearing session deposit previously deposited shall be refunded to the Claimants by the National Association of Securities Dealers, Inc.

AFFIRMATION

I, Thomas A. Harris, Esq., do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

Signature of Arbitrator: Thomas A. Harris

Date of Decision: May 18, 1993