

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

PaineWebber, Inc.

93-00112

Name of Respondents

**Dennis & Evelyn C. Pizak
Thomas Teegarden**

REPRESENTATION

**For Claimant, PaineWebber, Inc. at the hearing: Edward P. Degenhardt, Esq.
of PaineWebber, Inc., Westhaven, New Jersey.**

**For Respondents, Dennis and Evelyn Pizak, at the hearing: Robert C. Thomas,
Esq., Chicago, Illinois.**

**For Respondent, Thomas Teegarden, at the hearing: J. Michael Fitzsimmons,
Esq., of Fitzsimmons, Roberts & Paine, Oakbrook Terrace, Illinois.**

CASE INFORMATION

**Statement of Claim filed: January 11, 1993. Amended Statement of Claim filed:
January 29, 1993. Answer to Counterclaim filed by PaineWebber, Inc. and
Respondent Thomas Teegarden on: March 30, 1993. Amended Answer to
Counterclaim filed by PaineWebber and Respondent Thomas Teegarden on:
April 29, 1993.**

Claimant PaineWebber's Submission Agreement signed on: January 19, 1993.

**Joint Statement of Answer and Counterclaim filed by Respondents, Dennis and
Evelyn Pizak on: February 26, 1993.**

**Respondents, Dennis and Evelyn Pizak's joint Submission Agreement signed on:
March 19, 1993.**

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HEARING INFORMATION

Hearing Dates/Sessions: November 18, 1993 for two (2) sessions;
November 19, 1993 for two (2) sessions;
December 13, 1993 for two (2) sessions.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimant PaineWebber, Inc. (PW), in its Statement of Claim alleged that its customer, Respondent Dennis Pizak ("Pizak") failed to meet a margin call, thereby forcing PW to liquidate 8,000 shares of Lifecore Biomedical which Pizak held in his account with PW, and resulted in a debit in Pizak's account. PW further alleged that Pizak has failed to pay the debit debt as agreed to in the Client Agreement. PW Amended its Statement of Claim to include Evelyn Pizak as a co-respondent.

Respondents, Dennis and Evelyn Pizak ("Pizaks") generally denied the allegations set forth in the Statement of Claim. The Pizaks denied that they were given the opportunity to meet a margin call.

In their Counterclaim, the Pizaks' alleged that PW and its investment executive, Respondent Thomas Teegarden ("Teegarden") advised the Pizaks that the use of a margin account was appropriate for them, even though Teegarden was familiar with their relatively modest financial condition and insignificant investment experience, churned Pizaks' account, recommended and purchased unsuitable investments, liquidated shares of Lifecore Biomedical without their authorization, and failed to supervise.

The Pizaks more specifically alleged that PW, through its agent, Teegarden churned the Pizaks' account by the more than seventy trades in their account and by exercising control and discretion over the account by purchasing and selling securities without their consent such as the unauthorized purchase of Future Germany Fund, Inc. and Growth Fund of Spain, Inc. and the unauthorized sales of Lifecore Biomedical, Inc. The Pizaks' further alleged that the securities recommended were unsuitable and too speculative for the Pizaks, such as Cenvill, Intelligent System Master, New Germany Funds, Growth Fund of Spain, Tultex Corporation, Lifecore Biomedical, Biocontrol Technologies, Laidlaw, Inc., and Class B non-voting. The Pizaks alleged that Teegarden misled them in assuring that the stop loss was absolute and foolproof.

Claimant PW and its agent, Thomas Teegarden generally denied the allegations set forth in the Counterclaim. PW and Teegarden alleged that of the

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approximately seventy transactions made in Plzak's account approximately 15 were solicited by Teegarden as opposed to approximately 55 that Plzak initiated on his own. PW and Teegarden also alleged that all the transactions were executed at Plzak's order or upon his approval. PW and Teegarden further alleged that Teegarden conducted the proper background investigation on Plzak regarding his financial and investment status based upon numerous conversations with Plzak and that Plzak selected most of the "developing, speculative emerging or virtually unknown companies," and not as a recommendation from Teegarden. PW and Teegarden also alleged that Plzak suggested the stop order and that the stop order was explained to Plzak by Teegarden.

RELIEF REQUESTED

Claimant PaineWebber, Inc. requested an award in the amount of \$35,693.14 plus interest, attorneys' fees and costs against Dennis and Evelyn Plzak. PaineWebber, Inc. also requested that the Counterclaim be dismissed.

Respondents, Dennis and Evelyn Plzak requested that the Claimant's requests be denied. In their Counterclaim, the Plzaks requested an award in their favor and against PaineWebber, Inc. and/or its employee Thomas Teegarden for damages of not less than \$100,000.00, plus interest, attorneys' fees and costs.

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:

Statement of Claim

1. Respondents Dennis and Evelyn Plzak shall be and hereby are liable for and shall pay to the Claimant, PaineWebber, Inc. damages which includes interest, in the amount of Thirty Eight Thousand Ninety One Dollars And No Cents (\$38,091.00);

Counterclaim

2. Claimant/Counter-Respondent, PaineWebber, Inc. shall be and hereby is liable for and shall pay to the Respondents/Counter-Claimants, Dennis and Evelyn Plzak, damages, which includes interest, in the amount of Thirty Seven Thousand Eight Hundred Dollars and No Cents (\$37,800.00);

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3. Respondent Thomas Teegarden is dismissed from the claim filed against him;

4. Each of the parties shall bear their own costs and expenses, including attorneys' fees, other than those specifically set forth under Forum Fees below.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

6 sessions X \$600 = \$3600 minus hearing session deposit of \$600 = net \$3000 due.

The NASD shall retain the non-refundable filing fee in the sum of \$500 and the hearing session deposit in the sum of \$600 which were both previously deposited by the Claimant, PaineWebber, Inc. PaineWebber, Inc. shall pay to the NASD additional hearing session forum fees in the amount of \$1500.

The NASD shall retain the non-refundable Counterclaim filing fee in the sum of \$150 and the Counterclaim hearing session deposit in the sum of \$500 which were both previously deposited by the Respondents/Counter-Claimants, Dennis and Evelyn Plzak, for their Counterclaim. The Plzak's shall pay to the NASD additional hearing session forum fees in the sum of \$1000.

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

By The Arbitration Panel:

Dated:

<u>12/21/93</u>	s/s	<u>David L. Buffen, Esq.</u> David L. Buffen, Esq., Presiding Public Arbitrator
<u>12/22/93</u>	s/s	<u>Lynn Cohn, Esq.</u> Lynn Cohn, Esq.** Public Arbitrator
<u>12/21/93</u>	s/s	<u>Wallace D. Johnson</u> Wallace D. Johnson Industry Arbitrator

**Dissenting

Date Award Served By The NASD: December 23, 1993