

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Dolores J. Desmond

93-01881

Name of Respondents

PaineWebber, Inc.
Timothy John Sheehan

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on May 11, 1993, Claimant Dolores J. Desmond, who appeared Pro Se, alleged that in January 1992 Respondent Timothy Sheehan of Respondent firm PaineWebber, Inc., made a cold, unsolicited telephone call to Claimant whereby she and her husband advised him of their conservative financial background and of their desire for a reasonable yield from stock carrying little or no capital risk whereby this was simply an extension of their investment program prior to Respondent Timothy Sheehan, which was to stick with CD's in local banks. Claimant further alleged that Respondent Timothy Sheehan was given their ages and was advised of her and her husband's determination not to get involved with risky, adventurous stock and at no time thereafter did they tell Respondent Timothy Sheehan that Claimant was interested in moving up the risk scale to capture higher yields. Claimant contended that in mid-January 1992, Respondent Timothy Sheehan first mentioned Global Health Sciences Fund ("GHS"), an in-house fund of Respondent PaineWebber, Inc., promoted and sponsored by them, at which time Respondent Timothy Sheehan affected an enthusiasm for this stock without ever disclosing the outrageously negative risks which draped it. Claimant further contended that Respondent Timothy Sheehan said GHS was a closed-end fund with no costs involved, however; Respondent Timothy Sheehan did not describe a closed-end fund nor did he tell her of the various up-front commissions and expenses involved with the purchase. Claimant asserted that Respondent Timothy Sheehan did not advise her that this type of stock historically drops in value after it's public offering or that such stock is attractive only at a discount in the aftermarket. Claimant further asserted that Respondent Timothy Sheehan while glorifying Global Health, added a sense of urgency by saying that although an initial public offering was scheduled for late February 1992, market conditions favored an earlier entry,

at which time, based on Respondent Timothy Sheehan's oral representations and Claimant's implicit trust, Claimant purchased 1,000 shares of Global Health at \$15.00 per share on January 16, 1992 at it's initial public offering, at which time, Claimant did not then have a copy of the fund's prospectus nor was she advised to read it before investing and subsequently, on January 22, a baffling 55 page prospectus arrived; however, no where in that document was there a word of caution to first-time investors of what apparently were widely-known risks. Claimant further contended that during a conversation when GHS was \$14.00, Claimant's husband told Respondent Timothy Sheehan that she did not like the stock, that she was not interested in keeping it and that she sought a stock consistent with her investment objectives at which time Respondent Timothy Sheehan told her to be patient, that he was not advising any of his clients to sell. Claimant further asserted that on June 12, her husband called Respondent Timothy Sheehan to complain again about GHS and was told the fund was not fully invested, that it still had about 15 % in cash whereby a six month statement would be forthcoming. Claimant further alleged that after fully researching closed-end mutual funds, she was convinced that Respondent Timothy Sheehan, through a contrived course of fraud, deceit, concealment, misrepresentation and outright lies, left her with a palpably unsuitable investment. Claimant further contended that Respondent Timothy Sheehan had a duty to use reasonable care and skill in selecting a stock to minimize her risks, instead, he opted for an investment which netted him a greater commissions, earned Respondent PaineWebber, Inc. a higher profit and ignored the conservative element in her profile, thus, Respondents should be held liable for Claimant's losses.

Claimant asserted a Motion to Strike Respondents' Statement of Answer in that it was submitted by PaineWebber, Inc.'s litigation counsel and First Vice President, neither of these perosns, was previously involved in this dispute.

Respondents PaineWebber, Inc. and Timothy Sheehan, by and through their in-house counsel, Edward Degenhardt, Esq., maintained that Claimant Dolores J. Desmond opened an account with Respondent PaineWebber, Inc. on or about January 12, 1992, at it's Northbrook, Illinois, branch office and the investment executive assigned to the account was Respondent Timothy Sheehan. Respondents further maintained that on January 13, 1992 Respondent Timothy Sheehan called Claimant to discuss the Global Health Sciences Fund ("GHS") whereby all of the risks and information regarding the fund was discussed, at which time, Respondent Timothy Sheehan informed Claimant that GHS is a growth stock fund whose objectives is capital appreciation with little, if any, dividends. Respondents contended that Respondent Timothy Sheehan instructed Claimant about the management of the fund, strategies, liquidity structure and past performance of an existing mutual fund with the same management and similar goals and strategies, at which time, Respondent Timothy Sheehan also stated there is no guarantee or prediction GHS could achieve the same, worse or better returns than this other fund. Respondent further contended that Respondent Timothy Sheehan told Claimant that GHS was a new closed-end fund that would trade on the New York Stock Exchange whereby a proposed portfolio composition for Claimant was discussed and the health industry would comprise most of the capital, at which time Respondent also provided Claimant with a prospectus. Respondents

asserted that Claimant then gave Respondent Timothy Sheehan authorization to buy 1,000 shares of GHS at \$15.00 a share and subsequently, on five separate occasions after the offering, questions were asked by Claimant regarding the fund and new information was provided. Respondents further asserted that this purchase was in line with Claimant's goals and risk tolerance and on no occasion or conversation with Claimant did she authorize Respondent Timothy Sheehan to sell the position. Respondents further maintained that on June 19, 1992 the stock was down and Claimant relayed her dissatisfaction with the price of the fund, not the goal or strategy of the fund. Respondents further contended that at no time did Respondent Timothy Sheehan recommend GHS as a short-term investment or for a short-term strategy. Respondents further asserted that in a letter dated December 16, 1992 from Lawrence N. Kosciulek, the Supervisor of Examiners at the NASD regarding Claimant's complaint in which the main point of this letter reads as follows: "we have received the report of this investigation and determination that no action is warranted regarding the activities of your firm and Respondent Timothy Sheehan in connection with the Association's investigation of this customer complaint". Respondents further maintained that they present this information to reinforce their position that they acted properly in regard to Claimant's complaint, and the Statement of Claim is unwarranted.

Respondents replied to Claimant's Motion to Strike by refuting the claim and respectfully request that the Statement of Answer stand as presented.

RELIEF REQUESTED

Claimant Dolores J. Desmond requested the sum of \$4,400.00 in actual damages together with \$4,400.00 in Punitive damages.

Respondents PaineWebber, Inc. and Timothy Sheehan requested the claim be dismissed in its entirety.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Erica Colette Bushner, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on May 7, 1993, by the Respondent PaineWebber, Inc. on July 26, 1993 and not by the Respondent Timothy John Sheehan as required by Sections 12 & 13 of the NASD Code of Arbitration Procedure.

And, 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. Claimant Dolores J. Desmond's Motion to Compel Production of Documentation is hereby denied.
2. Claimant Dolores J. Desmond's Motion to Strike is hereby denied.
3. The claim of Claimant Dolores J. Desmond against Respondents PaineWebber, Inc. and Timothy John Sheehan is dismissed.
4. The parties shall bear their respective costs.
5. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Dolores J. Desmond shall be retained by the NASD, Inc.

AFFIRMATION

I, **ERICA COLETTE BUSHNER**, 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

DATE OF DECISION: December 3, 1993