

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Frank G. Regas

93-02503

Name of Respondents

PaineWebber, Inc.
Lillian Katzin

REPRESENTATION

For Claimant, Frank G. Regas ("Regas"): Jeffrey Sonn, Esq. of the Law Offices of Jeffrey Sonn and Adam D. Palmer, Esq. of Elk, Bankier & Palmer of Boca Raton, Florida.

For Respondent, PaineWebber, Inc. ("PaineWebber"): Thomas Kinzler, Esq. and Gregory Newcomm of Kelley, Drye & Warren of Miami, Florida.

For Respondent Lillian Katzin ("Katzin"): pro se

CASE INFORMATION

Statement of Claim filed: June 21, 1993 and amended on November 2, 1995.

Claimant's Submission Agreement signed on: June 17, 1993.

Statement of Answer filed by Respondents, PaineWebber and Katzin on: October 25, 1993.
Answer to Amended Claim filed on November 14, 1995.

Respondents, PaineWebber and Katzin did not sign Submission Agreements.

HEARING INFORMATION

On March 11, 12, 13, 14, 18, 19, 20, and 21, 1996 in Tampa, Florida, hearings lasting eighteen sessions were conducted.

CASE SUMMARY

Claimant asserted a claim against Respondents for breach of fiduciary duty, negligence, negligent supervision, violation of Florida Chapter 517, and breach of contract. Claimant alleged that Respondents wrongfully wired \$850,000.00 out of Claimant's account based on two forged letters of authorization. Claimant also alleged that Respondent wrongfully wired a total of \$5,365,850.00 from Claimant's account over a three year period without confirming receiving authorization for these transfers from Claimant; that Respondent wrongfully treated Claimant's account as if it belonged to Claimant's accountant, who was not a signatory nor held any power of attorney to the account; that Respondent wrongfully opened the Claimant's account solely through telephone conversations with Claimant's accountant without confirming the new account information with Claimant; that Respondent wrongfully failed to send Claimant account statements, trade confirmations, or checks for his checking account; that Respondent negligently provided blank letters of authorization to third parties and accepted incomplete letters of authorization from third parties without confirming the authenticity of said letters with the Claimant; and that Respondent wrongfully misrepresented to Claimant the status of his account.

Respondents denied all allegations of wrongdoing and alleged that any negligence was not the proximate cause of Claimant's loss and that Claimant was in the best position to protect against any alleged unauthorized transfers. Respondents contended that Claimant knew or should of known that his accountant was untrustworthy and was transferring funds from Claimant's account. Respondent argued that any fault should be apportioned among all wrongdoers, including the Claimant and those parties named in a Brevard County, Florida civil suit filed by Claimant. Respondents also alleged the following affirmative defenses: failure to state a claim; estoppel; waiver; any damages were proximately caused by Claimant's own wrongful or negligent acts or omissions; failure to mitigate damages; Claimant's contributory or comparative negligence; Claimant's failure to use due diligence in monitoring, managing, and handling his account; Claimant is precluded from recovering punitive damages under either New York or Florida law; and Claimant's amended claim is barred from the economic loss theory.

RELIEF REQUESTED

Claimant originally requested compensatory damages of \$2.9 million, disgorgement of compensation, loss of profits, attorneys' fees, costs incurred through these proceedings and such other relief as the panel deems just and appropriate. Claimant modified his claim at hearing to \$1.8 million, plus interest, punitive damages of \$1 million, attorneys' fees and costs.

Respondents, PaineWebber and Katzin requested dismissal of the case with prejudice, costs, and attorneys' fees. Alternatively, Respondents contended that fault should be apportioned among all defendants in the Brevard County civil suit, as well as Claimant.

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. Respondent, Katzin, is found liable and shall pay to the Claimant the amount of Twenty-five Thousand Dollars (\$25,000.00).
2. Respondent, PaineWebber is found liable and shall pay to the Claimant the amount of One Million Eight Hundred Fifty Thousand Dollars (\$1,850,000.00).
3. Respondent, PaineWebber, is found liable, and shall pay to the Claimant the amount of Two Hundred Thirty Thousand Dollars (\$230,000.00) for interest.
4. Respondent, PaineWebber, is found liable, and shall pay to the Claimant the amount of One Hundred Thousand Dollars (\$100,000.00) for attorney's fees. The arbitrators base their authority to award attorneys' fees under the Federal Arbitration Act and underlying case law.
5. Respondents' requests for costs and attorneys' fees are hereby denied.
6. Claimant's requests for disgorgement of compensation and loss of profits are hereby denied.

OTHER COSTS

Other than as provided below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$18,300.00 (eighteen hearing sessions x \$1,000.00 per session plus \$300.00

for the prehearing conference).

1. Respondent, PaineWebber, is hereby assessed forum fees in the amount of \$18,300.00 of which \$1,000.00 shall be paid directly to the Claimant as a refund of his hearing session deposit and \$17,300.00 of which shall be paid directly to the National Association of Securities Dealers, Inc.
2. Respondent, PaineWebber, shall pay to the Claimant the \$250.00 non-refundable filing fee previously paid by the Claimant.

Concurring Arbitrators' Signatures

Name

Public/Industry

/s/
James F. Turner, III

Public/Chairman

/s/
Robert A. Sauerberg

Public

/s/
Archibald L. Watkins

Industry

Date of Decision: May 3, 1996