

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Patricia A. Farese

93-03446

Name of Respondents

PaineWebber, Inc.
Thomas Patrick Hayden
Mark Tyler Hyde

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on September 2, 1993, Claimant Patricia A. Farese, who appeared Pro Se, alleged that prior to February 1, 1993 she received several phone calls from Respondent Mark Tyler Hyde of Respondent PaineWebber, Inc. soliciting her investment business, at which time, she made it clear that at her age, she was interested only in safety of principal and income tax exemption. Claimant further alleged that Respondent Mark Tyler Hyde called on February 1, 1993 to suggest the purchase of 7.95 % N.J. Hsg. & Mtg. Fin Agency at 105.25 with a maturity at 4-1-25, at which time, Claimant questioned the high premium when he mentioned a potential call feature in the bonds whereby in justification of the premium, Respondent Mark Tyler Hyde quoted "attractive" yields at various dates laddered between 5 and 20 years should the bonds be called. Claimant contended that on further questioning Respondent Mark Tyler Hyde stated that even in a worse case scenario of a call at 2 years, the tax free return would be at least 5 %, at which time, relying on his explanation and advice, she agreed to buy 20 bonds and then increased this number by 5 additional bonds when he said that he had obtained from another source. Claimant further contended on February 5, 1993, she visited Respondent Mark Tyler Hyde's office to make his acquaintance and to pay for the bonds, at which time, she again brought up the question of the bond premium and he assured her that she had made a good investment, and in fact, he offered to repurchase the bonds at our original cost whereby after further small take, she requested a receipt for her payment and a copy of the Prospectus. Claimant asserted that her February 26, statement listed the bonds at a price of 100.189, a sudden drop of over \$1,200.00, at which time, Claimant, feeling very disturbed, called Respondent Mark Tyler Hyde who told her that declining interest rates caused the drop in bond value whereby reminded of his earlier offer, he

would not repurchase the bonds at the original cost and neither was he very convincing in his reply to her suggestion that bond prices rise when interest rates fall. Claimant further asserted that she was never informed, either at time of purchase or any other time, of the extraordinary call feature of the bonds or that this feature could be exercised at the option of the Agency at anytime regardless of whether interest rates rose or declined. Claimant further contended that she contacted Respondent PaineWebber, Inc. by and through Respondent Thomas P. Hayden, Vice President, to request the entire trade be canceled and that her original funds be restored to her together with reasonable interest whereby Respondent Thomas P. Hayden denied this request. Claimant further asserted that Respondent Mark Tyler Hyde's misrepresentations and Respondent's PaineWebber, Inc. and Thomas P. Hayden's failure to supervise, caused her to sustain losses.

Respondents PaineWebber, Inc., Thomas P. Hayden and Mark Tyler Hyde, by and through their in-house counsel Joseph F. Generelli, Esq., maintained that the Statement of Claim fails to state a cause of action upon which relief can be granted and Respondents acted in compliance with all applicable rules and regulations and acted in good faith and did not directly induce the alleged act or acts, if any constituting alleged violations of law. Respondents further maintained that the damages allegedly suffered by Claimant had no casual relationship with any act undertaken by or attributable to Respondents whereby Claimant is estopped by her conduct from maintaining this action against Respondents. Respondents contended that Claimant's Statement of Claim is barred, in whole or in part, by the doctrine of ratification and affirmance by the action of the Claimant and injuries, if any, alleged to have been sustained by the Claimant, were caused, in whole or in part, by the conduct of the Claimant. Respondents further contended that the transactions complained of in the Claimant's Statement of Claim were duly authorized by the Claimant who, at all times, were in sole control of the assets in her account. Respondents asserted that Claimant knew and understood the risks associated with the investments made in her account through Respondents and represented herself as willing and able to assume those risks.

RELIEF REQUESTED

Claimant Patricia A. Farese requested the trade date of 2-1-93 be canceled, in addition to the sum of \$1,312.50 in actual damages together with lost interest on the uninvested funds of \$15,000.00 and costs in the amount of \$3.80.

Respondents PaineWebber, Inc., Thomas P. Hayden, and Mark Tyler Hyde requested the claim be dismissed with prejudice and that costs be assessed against Claimant.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Neil J. Carey, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on August 25, 1993, by the Respondent PaineWebber, Inc. on November 19, 1993, and by the Respondents Thomas R. Hayden and Mark Tyler Hyde on November 29, 1993.

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. The claim of Claimant Patricia A. Farese against Respondents PaineWebber, Inc., Thomas P. Hayden and Mark Tyler Hyde is dismissed.
2. The parties shall bear their respective costs.
3. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Patricia A. Farese shall be retained by the NASD, Inc. Respondent PaineWebber, Inc. is liable and shall pay to the Claimant the sum of \$50.00, as reimbursement.

AFFIRMATION

I, NEIL J. CAREY, 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: February 18, 1994

STATE OF: Connecticut

SS: Stamford

COUNTY OF: Fairfield

On this 14th day of February 1994, before me personally appeared Neil J. Carey to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Olga L. Dasilva
6/30/98