

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

PaineWebber, Inc.

and

93-04374

Name of Respondent

Michael S. Cox

REPRESENTATION OF PARTIES

PaineWebber, Inc. ("Claimant") was represented by Edward P. Degenhardt, Esq., PaineWebber, Inc., Weehawken, New Jersey.

Michael S. Cox ("Respondent") was represented by Gerald P. Ferguson, Esq., Vorys, Sater, Seymour and Pease, Columbus, Ohio.

CASE INFORMATION

The Statement of Claim was filed on or about October 22, 1993. Submission Agreement of Claimant PaineWebber, Inc. was signed on October 12, 1993 by Garry Stegeland.

Statement of Answer was filed by Respondent on or about December 16, 1993. Submission Agreement of Respondent Michael S. Cox was signed on January 10, 1994.

HEARING INFORMATION

A pre-hearing conference was conducted on July 14, 1994 for one (1) session. The hearing was held on Thursday, October 13, 1994 in Columbus, Ohio for a total of two (2) sessions.

CASE SUMMARY

Claimant alleged that a customer complaint was settled by PaineWebber for which it seeks indemnification or in the alternative, contribution. It was further alleged that the customer complain alleged fraud, unsuitable and unauthorized trading, breach of fiduciary duty and damages in the amount of \$100,000.

Respondent stated he should not be held liable for any portion of the settlement entered into between Claimant and Ms. Dorsey. Specifically, Respondent stated that PaineWebber had asserted various defenses to the claims asserted by Ms. Dorsey including but limited to:

- * Dorsey's account was conservatively managed;
- * Cox regularly communicated with Ms. Dorsey regarding her account;
- * Cox did not churn Ms. Dorsey's account or engage in unauthorized trading; and
- * Ms. Dorsey ratified the conduct alleged.

Respondent further alleged that PaineWebber also asserted affirmative defenses on its behalf which are applicable herein and defeat the claims asserted in this matter.

RELIEF REQUESTED

Claimant requested an award in the amount of \$60,000, plus interest, together with attorneys' fees and costs.

Respondent requested that the Statement of Claim be dismissed and that the costs of these proceedings be assessed against the 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 original(s) 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. The claims asserted in this matter shall be and hereby are dismissed in their entirety.
2. Each party shall bear its own costs, expenses and attorneys' fees incurred in this matter not specifically enumerated herein.
3. All relief requested not specifically awarded is hereby denied.

FORUM FEES

Forum fees are calculated at the rate of \$600 per hearing session and \$300 for each prehearing conference, if any. There was one (1) pre-hearing conference x \$300 and two (2) hearing

sessions x \$600 = \$1,500 in forum fees. Pursuant to §44(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §44(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$500 and shall retain as forum fees the hearing session deposit in the amount of \$600 previously deposited with the NASD by the Claimant PaineWebber, Inc. Claimant PaineWebber, Inc. shall be and hereby is liable for and shall pay to the NASD the sum of \$900 as the balance due for forum fees.

Dated:

/s/ Robert Shiffra, Esq.
Robert Shiffra, Esq.
Industry Arbitrator, Presiding Chair

October 24, 1994

/s/ George W. Humm
George W. Humm
Industry Arbitrator

October 25, 1994

/s/ Robert P. Fogarty
Robert P. Fogarty
Industry Arbitrator

October 24, 1994