

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Bess Carrier

93-04682

Name of Respondent(s)

PaineWebber, Inc.  
Alan Morris

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**CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc. on November 10, 1993, Claimant Bess Carrier, through her representative, Barry Alper of Securities Arbitration Consultants, Inc. of Boca Raton, FL, alleged that Respondents PaineWebber, Inc. ("PW") and Alan Morris ("Morris") breached their fiduciary duty, were negligent in handling her account and breached their contract. Claimant further alleged that Respondent Morris was assigned to be her account executive when she moved her account to Respondent PW's Sarasota, FL office. Claimant contended that her investment objective, as listed on her new account form, was income with safety. Claimant further contended that on January 8, 1992, Morris contacted the Claimants husband, and solicited an investment in Global Health Science Fund, an unsuitable mutual fund which Morris represented as being safe, conservative, and in accordance with Claimants investment objectives. Claimant alleged that this was an unauthorized third party transaction which declined in value by more than 25% over a 12 month period. Claimant further alleged that on December 22, 1992, Morris again contacted Claimant's husband and solicited an investment in the 2002 Target Term Trust, another unsuitable mutual fund, which again declined in value, causing a loss for which Respondents should be held liable.

Respondents PaineWebber, Inc. through its representative and in-house counsel, Joseph A. Vallo, Esq., maintained that on or about January 24, 1992, Claimant authorized the purchase of 1,024 units of Global Health Sciences Fund ("Global") and was furnished with a prospectus which detailed the nature of the investment and the risks involved. Respondent PaineWebber, Inc. further maintained that Claimant received monthly statements detailing the activity in her account. Respondent PaineWebber contended that Claimant authorized the sale of Global on December 15, 1992, and the purchase of Target Term Trust ("Target") on December 20, 1992.



Respondent PaineWebber, Inc. further contended that Claimant authorized the sale of Target on April 21, 1993, and it should not be held liable for Claimant's loss.

Respondent Alan Morris, through his representative, Lloyd R. Schwed, Esq., of Honigman, Miller, Schwartz and Cohn, in West Palm Beach, FL, maintained that Claimant received the prospectus for Global, chose Global from among several alternatives offered by Morris, and made an informed decision to invest. Respondent Morris further maintained that Claimant herself, and not her husband, authorized the purchase of Global, which was suitable in view of her investment objectives, financial status, age and intelligence. Respondent Morris contended that the purchase of 2002 Target Term Trust was authorized as well, and he should not be held liable for Claimant's loss.

#### **RELIEF REQUESTED**

Claimant Bess Carrier requested \$10,000.00 in actual damages, plus rescision of the investment, interest and costs.

Respondent PaineWebber, Inc. requested that the claims of the Claimant be dismissed.

Respondent Alan Morris requested that the claims of the claimant be dismissed.

#### **AWARD**

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Gary M. Landau, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on October 19, 1993 and by the Respondent PaineWebber, Inc. on April 26, 1994 and by Respondent Alan Morris on April 28, 1994.

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 claims of the Claimant Bess Carrier against the Respondents, PaineWebber, Inc. and Alan Morris, are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Bess Carrier, shall be retained by the NASD, Inc.

**Affirmation**

STATE OF FLORIDA

} SS:

COUNTY OF BROWARD

I, RAY M LONGB, do hereby affirm upon my oath  
as arbitrator that I am the individual described in and who executed this instrument,  
which is my oath and award.

  
Signature of Arbitrator

DATE OF DECISION: June 15, 1995

**REPORT OF ARBITRATOR**

In this arbitrator's view, this is a suitability case. Based on the record before me, I cannot hold the broker responsible because the investment(s) lost money. There is no credible evidence of malfeasance or even negligence on the part of the broker. The claimant was not an innocent beginner to the market lured to a highly questionable security, was apparently given the prospectus to read at the time the investment was made, and was apparently able and willing to take at least a mild degree of risk.

Further, the Claimant failed to mitigate her damages. Her husband admits that he followed the Global Fund for 12 months and saw it lose money and that he also followed the 2002 Trust for months and saw it lose money. The Claimant cannot sit and wait, hoping that the security increases in value, and then when it doesn't, hold the broker responsible.