

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Charles W. Cobb, Jr.

94-00079

Name of Respondents

PaineWebber, Inc.
Charles Poulin

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 5, 1994, Claimant Charles W. Cobb, Jr., through his representative Carl H. Lisman, of Lisman & Lisman, Burlington, Vermont, alleged that he delivered written instructions to Respondent Charles Poulin ("Poulin") and Respondent PaineWebber, Inc., on July 30, 1993 at 10:30 AM to liquidate his investment in the PaineWebber Dividend Growth Fund A and to transfer the proceeds to an IRA at the Scudder Trust Company. Claimant further alleged that after making an additional demand of Respondents to liquidate his investment in the PaineWebber Dividend Growth Fund A, it was not liquidated by the Respondents until August 10, 1993. Claimant further contended that his funds were not transferred to the Scudder Trust Company and made available for investment until August 26, 1993. Claimant contended that Respondents charged him a sales fee of \$81.28 upon liquidation of his account, when such a charge should not have been made since the investment in question was a "front-end" loaded fund. In his response to Respondents' Answer dated April 27, 1994, Claimant alleged that he would not have been sent promotional material on the PaineWebber Dividend Growth Fund A from the Respondents the same day he first requested the liquidation of his account if Respondent Poulin had intended to execute Claimant's instructions. As a result of the above, Claimant alleged that he has suffered damages for which the Respondents should be held liable.

Respondents PaineWebber, Inc. and Charles Poulin, through Respondent PaineWebber, Inc.'s in-house counsel Joseph F. Generelli, Esq., Weehawken,

New Jersey, maintained that they did not receive written instructions from Claimant to liquidate Claimant's account until late in the day on July 30, 1993, when it was too late to execute Claimant's instructions. Respondents further maintained that they executed Claimant's instructions on the next business day, which was August 2, 1993. Respondents contended that five business days later, on August 9, 1993, in accordance with normal mutual fund transactions the trade settled. Respondents further contended that on August 10, 1993, they transferred the proceeds of the sale to the Scudder Trust Company. Respondents maintained that after receiving notice from Scudder Trust Company and the Claimant that the funds had not arrived, Respondent Poulin placed a stop payment on the check covering these funds on August 19, 1993. Respondents further maintained that a second check covering these funds was sent to Scudder Investment Company on August 23, 1993. Respondents maintained that any delay in the transfer of Claimant's proceeds to Scudder Trust Company was due solely to Scudder Trust Company's misplacement of the check. Respondents contended that Claimant was charged an \$85.00 fee upon liquidation of his account with Respondent PaineWebber, Inc., which represented a \$50.00 termination fee, and a \$35.00 annual IRA fee. Respondents further contended that these fees were explained on the new account form Claimant signed to open his IRA with Respondent PaineWebber, Inc. As a result of the above, Respondents maintained that they should not be held liable in this matter.

RELIEF REQUESTED

Claimant Charles W. Cobb, Jr. requested \$1,300.00 in actual damages, plus costs and attorney's fees.

Respondents PaineWebber, Inc. and Charles Poulin requested that the Claimant's Statement of 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, Mary S. Sweeney, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on December 29, 1993, by Respondent PaineWebber, Inc. on March 31, 1994, and by Respondent Charles Poulin on March 31, 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 Claimant Charles W. Cobb, Jr. against Respondents PaineWebber Inc. and Charles Poulin are dismissed in their entirety.
2. The parties shall bear their respective costs, including attorney's fees.
3. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.

AFFIRMATION

I, **MARY S. SWEENEY**, do hereby affirm upon my oath of 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: July 12, 1994

STATE OF: *NY*

SS:

COUNTY OF: *Albany*

On this *8th* day of *July* 19*94*, before me personally appeared MARY SWEENEY, ESQ. 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.

Robert L. Sweeney

ROBERT L. SWEENEY
Notary Public in the State of New York
Qualified in Albany Co. No. 4672613
My Comm. Exp. 12/31/95

11/27/95