

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Robert J. Shapiro

and

94-00154

Name of Respondents

**PaineWebber, Inc.
Timothy Grantham**

REPRESENTATION OF PARTIES

Robert J. Shapiro ("Claimant") appeared *pro se*.

PaineWebber, Inc. and Timothy Grantham ("Respondents") were represented by Nicholas P. Kapur, Esq., PaineWebber, Inc., Weehawken, New Jersey.

CASE INFORMATION

The Statement of Claim was filed on or about January 14, 1994. Submission Agreement of Claimant Robert J. Shapiro was signed on January 6, 1994.

Statement of Answer was filed by Respondents on or about May 12, 1994. Submission Agreement of Respondent PaineWebber, Inc. was signed on May 16, 1994 by Joseph F. Generelli. Submission Agreement of Respondent Timothy Grantham was signed on April 21, 1994.

HEARING INFORMATION

The hearing was held on Thursday, December 1, 1994 in Dallas, Texas for a total of two (2) sessions.

CASE SUMMARY

Claimant alleged that Respondents engaged in misrepresentation, commission rebates, failure to exercise due care, and reckless conduct. Specifically, Claimant alleged:

- that Respondent Grantham had stated that the investment in PaineWebber High Income Mutual Fund did not include a penalty if the money invested was withdrawn, which was not the case;
- that in order to offset or compensate the Claimant for his loss, Respondent Grantham offered to credit to the Claimant \$2,000 in future commissions whether or not the Claimant withdrew funds from the mutual fund, which did not occur;
- that based upon certain representations made by Respondent Grantham, Claimant purchased shares of Cytogen stock;
- that from the time the stock price began to decline, the Claimant repeatedly and consistently advised Grantham that he wished to sell the stock;
- that in order to facilitate making the decision to sell the Cytogen stock, Respondent agreed to keep the Claimant informed of any and all developments related to the stock, which Respondent Grantham failed to do; and
- that Respondent PaineWebber failed to properly manage, oversee, and supervise Grantham.

Respondents denied the allegations set forth in the Statement of Claim. With respect to the purchase of Cytogen stock Respondents specifically stated that during February 1992, Grantham spoke to Claimant about selling the Cytogen stock, which was in the \$23 to \$24 per share range, which advice was rejected by the Claimant. With respect to the allegations regarding misrepresentations concerning penalties for withdrawal of funds from proprietary mutual funds, Respondents stated that:

- transfer requests were rejected due to the fact that Shearson would not accept PaineWebber open-end mutual funds;
- that when Grantham called Claimant to inquire about the transfer, Claimant refused to pay any sales charge to "get his money out of PaineWebber" at which time, Grantham reminded Claimant that he had explained to him at the time of purchase that he would not be able to liquidate the fund early without incurring a sales charge; and
- that in an effort to smooth out the situation, Grantham called the Claimant after conferring with his sales manager and offered to discount the Claimant's commissions by 35% on future trades up to a total of \$2,000.

Respondents further stated that the Claimant was fully advised of the risks, benefits, and restrictions involved with the purchase of the mutual fund and that the Claimant had made it clear to Grantham that the Claimant's broker at Shearson were aware and were monitoring the price of Cytogen. Respondents also asserted affirmative defenses including but not limited to failure to mitigate; estoppel; and the claims are barred by the doctrines of laches and by the applicable statutes of limitations.

RELIEF REQUESTED

Claimant requested an award of unspecified compensatory damages and punitive damages in the amount of \$25,000, and attorneys' fees pursuant to Tex. Civ. Prac. & Rem. Code §37.009.

Respondent requested that the claims asserted against it be denied in its entirety and that it be awarded its' costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains 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 Timothy Grantham shall be and hereby is liable for and shall pay to the Claimant Robert J. Shapiro the sum of One thousand five hundred seventy five dollars and thirty seven cents (\$1,575.37).
2. The claims asserted against Respondent PaineWebber, Inc. shall be and hereby are dismissed in their entirety.
3. No punitive damages are awarded herein.
4. Each party shall bear its own costs, expenses and attorneys' fees incurred in this matter not specifically enumerated herein.


FORUM FEES

Forum fees are calculated at the rate of \$500 per hearing session and \$300 for each prehearing conference, if any. There were two (2) sessions x \$500 = \$1,000 in forum fees. Pursuant to §43(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.

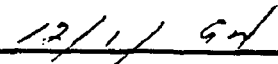
Pursuant to §43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$150 and shall retain as forum fees the hearing session deposit in the amount of \$500 previously

deposited with the NASD by the Claimant Robert J. Shapiro. Respondent PaineWebber, Inc. shall be and hereby is liable for and shall pay to the NASD the sum of \$500 as the balance due for forum fees. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

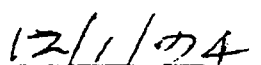


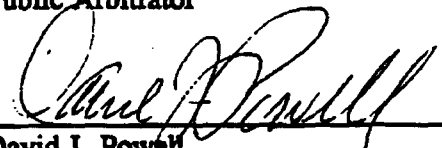
Joe B. Abbey, Esq.
Public Arbitrator, Presiding Chair





George C. Witte
Public Arbitrator





David J. Powell
Industry Arbitrator