

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Sally Van Name

94-00381

Name of Respondents

PaineWebber, Inc.
Dan Porter

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 1, 1994, Claimant Sally Van Name, through her representative, David Liebrander, Esq., Woodland Hills, California, alleged that Respondents PaineWebber, Inc. and Dan Porter sold her unsuitable investments and breached their fiduciary duty to her. Claimant further alleged that Respondent Porter sold her three investments: Pegasus Aircraft Leasing II, Essex Financial Partners, and PaineWebber Guaranteed Futures Fund. Claimant contended that at the time she met Respondent Porter all of her money was invested conservatively in a savings account and she was persuaded to put her money into investments that would provide a regular, high rate of return. Claimant further contended that upon entering these limited partnerships with Respondent PaineWebber, she informed Respondent Porter that her investment objectives were income, liquidity, safety and growth, and that she wished to save money to live on as she was approaching retirement. Claimant alleged that Respondent Porter did not adequately or truthfully explain the function or risks of the investments. As a result of the above, Claimant contended that she has suffered damages for which the Respondents should be held liable.

Respondents PaineWebber, Inc. and Dan Porter, through their representative, Joseph F. Generelli, Esq., Weehawken, NJ, maintained that Claimant actively pursued Respondent Porter, on a referral from another of Mr. Porter's clients, to have him manage her money. Respondents further maintained that Claimant stated that her investment objectives were to provide income with which to live on, with some money to be invested for growth and that she had "\$7,000.00 to gamble with" which could be invested for growth. Respondents contended that with this information in mind, and with Claimant's full authority and agreement, Respondent Porter invested part of Claimant's capital in three highly recommended Limited Partnerships.

Respondents further contended that these investments did not perform as well as they were forecasted to perform, but all potential risks and returns had been discussed with Claimant. Respondents maintained that to charge that Respondent Porter invested in these positions to generate commissions is ludicrous as he made less than 5% of the total value of the account in commissions. Respondents further maintained that Claimant received a prospectus for each limited partnership which clearly stated, several times, that no economic forecast was guaranteed and any expected returns could be diminished or wiped out due to unforeseeable, unexpected changes in the economy or markets to which these investments were linked. As a result of the above, Respondents maintained that they should not be held liable in this matter.

RELIEF REQUESTED

Claimant Sally Van Name requested \$10,000.00 in actual damages plus interest, costs, and consulting fees.

Respondents PaineWebber, Inc. and Dan Porter 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, K. Steve Kimball, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on December 31, 1993, by the Respondent PaineWebber, Inc. on August 23, 1994 and by the Respondent Dan Porter on August 8, 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. Respondents PaineWebber, Inc. and Dan Porter are jointly and severally liable and shall pay to Claimant Sally Van Name \$10,000.00 in actual damages.
2. Respondents PaineWebber, Inc. and Dan Porter are jointly and severally liable and shall pay to Claimant Sally Van Name simple interest at the rate of 5% per annum from August 25, 1989 to January 31, 1995.

3. Respondents PaineWebber, Inc. and Dan Porter are jointly and severally liable and shall pay to Claimant Sally Van Name consulting fees in the amount of \$3,000.00 pursuant to sections 38.001 and 38.005 of the Texas Civil Practice and Remedies Code.
4. The parties shall bear their respective costs.
5. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Sally Van Name shall be retained by the NASD, Inc. Respondents PaineWebber, Inc. and Dan Porter are jointly and severally liable and shall pay to Claimant \$150.00 as reimbursement of the filing fee.

AFFIRMATION

I, K. STEVE KIMBALL, 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: April 5, 1995