

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

William DeMarkey

94-01870

Name of Respondent

PaineWebber, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on May 18, 1994, Claimant William DeMarkey, who appeared Pro Se, alleged that Respondent PaineWebber, Inc., breached its fiduciary duty to him. Claimant further alleged that Respondent advised him to sell 1,000 shares of Aura Systems on February 6, 1991 for \$2.00 per share. Claimant contended that shortly after the sale, news was released, and the price increased to \$9.00 a share. Claimant further contended that but for Respondent's advice to sell, he would have sold his shares at \$9.00 a share, and therefore, the Respondent should be held liable for the difference.

Respondent PaineWebber, Inc, through its in-house representative, Melanie S. Cherdack, Esq. of Miami, FL., maintained that Claimant held his stock for two years, during which time there was little movement in the stock. Respondent further maintained that the stock price did not begin to rise until almost three months after Claimant sold it. Respondent contended that Claimant was a seasoned, speculative investor who knew the market risks and assumed them, and accordingly, it should not be held liable for Claimant's loss.

RELIEF REQUESTED

Claimant William DeMarkey requested \$7,135.00 in actual damages.

Respondent PaineWebber, Inc. 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, Laz L. Schneider, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on May 12, 1994 and by the Respondent October 13, 1994.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full final resolution of the issues submitted for determination as follows:

1. The claims of the Claimant William DeMarkey against the Respondent PaineWebber, Inc. 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 William DeMarkey shall be retained by the NASD, Inc.

AFFIRMATION

I, **LAZ L. SCHNEIDER, ESQ.**, 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.



Laz L. Schneider, Esq.

DATE OF DECISION:

June 12, 1995