

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

PaineWebber, Inc.

v.

CASE NO.
94-02135

Name of Respondents

Christine L. Bidwell & Anna K. Raetzell

v.

Third Party Respondent

Robert Jones

REPRESENTATION

For Claimant: Edward Degenhardt, Esq., PaineWebber, Inc.

For Respondents: William Paul McGuire, Esq., McGuire & Ford Co., L.P.A.

Third Party Respondent appeared pro se.

CASE INFORMATION

Statement of Claim filed: June 7, 1994.

Claimant's Submission Agreement signed on: June 2, 1994.

Statement of Answer and Third Party Claim filed by Respondents, Christine L. Bidwell and Anna Raetzell on: September 14, 1994.

Respondents' Submission Agreement signed on: August 17, 1994.

Third Party Respondent answer was filed on: March 6, 1995

Third Party Respondent Submission Agreement filed on: May 17, 1995.

HEARING INFORMATION

Hearing Date Sessions: November 27, 1995 2 - Sessions

Hearing Location: NASD office located at 1350 Euclid Avenue, Ste. 650, Renaissance Building on Playhouse Square, Cleveland, OH 44135

CASE SUMMARY

Claimant alleged that Respondents on or about January 26, 1989, opened an account with Claimant, #GT-21439, and signed a Client's Agreement and a Joint Account Agreement. Claimant alleged that on June 8, 1992, a deposit in the amount of \$40,000.00 was erroneously made into Respondents' account. Claimant maintained that Respondents failed to advise Claimant of the erroneous deposit. Claimant further alleged that on June 26, 1992, Respondents subsequently purchased \$40,000.00 of PaineWebber Cashfund, earning dividends on this purchase throughout the period Respondents held it in their account. Claimant alleged that from October 1992 through July 1993, Respondents cashed checks and sold their PaineWebber Cashfund account to cover these checks, depleting most of the account.

Claimant further alleged that in September 1993, Kathryn Schnur, M.D. ("Schnur"), another client of Claimant, telephoned Claimant to inquire why her account had not been credited for the \$40,000.00 deposit which was made in June 1992, after her auditors discovered that the deposit was missing. Claimant alleged that it was unaware of this error prior to Schnur's discovery. Claimant alleged that its review revealed that the aforementioned \$40,000.00 check was mistakenly credited into Respondents' account. Claimant went on to state that on December 8, 1993 it corrected the error by debiting Respondents' account, which resulted in Respondents carrying a \$41,407.07 debit in February 1994. Claimant alleged further that it informed Respondents of what occurred, and requested payment of their account debit. Respondents refused to pay. Consequently, Claimant alleged that Respondents were unrichly enriched in the amount of \$41,407.07.

Respondents maintained that they did not owe Claimant any debt. Respondents denied the allegation that they did not contact Claimant regarding the contested deposit. Respondents also maintained that they never ordered the purchase of the PaineWebber Cashfund.

Respondents asserted the defense of estoppel against Claimant for having notice of and failure to investigate Respondents' concerns. Respondents also defended that if the allegation were true the these funds belonged to Kathryn Schnur, M.D., then the acts of Robert Jones were negligent or contributorily negligent. Respondents also maintained that Claimant was negligent or contributorily negligent in that after being put on notice once by Respondents in August 1992, Claimant and/or Robert Jones failed to timely investigate and discover its error.

Respondents asserted a Third Party Claim against their account representative, Robert Jones ("Jones"), an employee of Claimant. Respondents maintained that on or about August 1992, they inquired about their account, and that Jones misrepresented that the funds were available to them. Respondents further maintained that all subsequent transactions involving the account were conducted by Third Party Respondent. Respondents also alleged that Third Party Respondent negligently deposited, and failed to oversee or control the proper depositing of the alleged check of Schnur.

Jones denied all allegations of negligence and misrepresentation. Jones alleged that as per the standard operating procedure of Claimant, he would not have seen an incoming check as PaineWebber Operations personnel were responsible for this task; therefore, Jones had no role in the depositing or overseeing of the controverted funds. Jones maintained that as he had no duty to deposit or oversee Respondents' funds, he was not negligent.

Jones further alleged that Respondents' money market account was purchased automatically, as

per Claimant's standard procedure which prevents funds from sitting idly without earning interest. Jones maintained that he would only have performed this type of transaction under unusual circumstances, and that he does not remember so doing.

As for Respondents' claim that Jones misrepresented the amount of funds available to them, Jones alleged that he vaguely remembered that he, as per standard procedure, would have verified their availability from his computer, which reflects data entered by the Operations department of Claimant.

RELIEF REQUESTED

Claimant requested:

Entry of an award in its favor against Christine L. Bidwell and Anna K. Raetzel, in the amount of \$41,407.07, plus interest, together with attorneys' fees, costs and NASD filing costs.

Respondents requested that should the Panel of Arbitrators find that Respondents are in totally or partially liable to Claimant, that Third Party Respondent Robert Jones be held liable to Respondents for any awards, decisions or liabilities in which the Arbitrators may find against Respondents.

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. Respondents Bidwell and Raetzel are jointly and severally liable to Claimant in the amount of 41,407.07, plus \$1600.00 in interest, for an aggregate of \$43,007.07.
2. All claims against Robert Jones be and hereby are dismissed in their entirety.
3. All requests for attorneys' fees are denied.
4. Forum fees are to be paid one-half by Claimant and one-half jointly and severally by Respondents Bidwell and Raetzel.

FORUM FEES

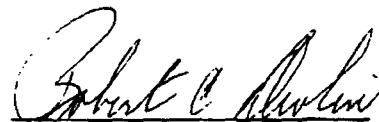
Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

Non-Refundable filing fees:	\$ 620.00
Hearing Sessions: (\$600.00 x 2 sessions)	\$1200.00

TOTAL FEES:	<u>\$1820.00</u>
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1. Claimant paid \$1,100.00.
2. Respondents Bidwell & Raetzel paid \$1,100.00

Concurring Arbitrators' Signatures


Robert C. Devlin, Esq.
Chairperson

Public

Hyman Braham, Esq.

Public

Henry Ott-Hansen

Industry

Date of Decision: March 25, 1996

Concurring Arbitrators' Signatures

Robert C. Devlin, Esq.
Chairperson

Public

Hyman Braham
Hyman Braham, Esq.

Public

Henry Ott-Hansen

Industry

Date of Decision: March 25, 1996

Concurring Arbitrators' Signatures

Robert C. Devlin, Esq.
Chairperson

Public

Hyman Braham, Esq.

Public

Henry Ott-Hansen
Henry Ott-Hansen

Industry

Date of Decision: March 25, 1996