

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

Name of Claimant

Estate Of Annabelle P. Bissell

vs.

Award No.  
95-00282

Name of Respondents

PaineWebber, Inc.  
Robert M Burke

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**REPRESENTATION**

For Claimant, Estate of Annabelle P. Bissell ("Claimant"), appeared Howard M. Rosenfield, Esq. from Avon, Connecticut.

For Respondents, PaineWebber, Inc. ("PW") and Robert M. Burke ("Burke"), appeared Alice K. Jump an Senior Attorney with Painwebber, Incorporated. in Weehawken, New Jersey.

**CASE INFORMATION**

Statement of Claim was filed on January 19, 1995.

Claimant's Submission Agreement was signed by Kurt Bissell ("Bissell"), as Executor, on September 9, 1994.

Joint Statement of Answer and Cross Claim was filed by Respondents PW and Burke on July 7, 1995.

Respondent PW's Submission Agreement was signed on August 10, 1995.

Respondent Burke's Submission Agreement was signed on August 17, 1995.

**HEARING INFORMATION**

Hearing Dates/Sessions:	May 2, 1996	-	2 Sessions
	May 3, 1996	-	2 Sessions
	July 1, 1996	-	2 Sessions
	July 2, 1996	-	2 Sessions

All hearings were held at the office of the National Association of Securities Dealers, Inc. located in Boston, Massachusetts.

**CASE SUMMARY**

Mr. Bissell alleged that his mother, Mrs. Annabelle P. Bissell, opened an account with in PW where she invested in blue chip issues and Nuveen bonds in accordance with her conservative investment objectives. Bissell alleged that after the death of his mother on November 6, 1990, Burke, a PW registered

representative, met with him, in early January, 1991, to discuss the account and the procedure which was necessary before transactions could be effected for the account.

Bissell contended that, at the aforementioned meeting, Burke also discussed possible transactions which could be executed by Bissell once PW received the necessary documentation. Bissell also contended that Burke's assistant sent him a letter on January 11, 1991 requesting the execution and return of certain legal documents that would be required for the estate account. Bissell further contended that he purposely did not sign or return any of the documents so that he would have an opportunity to study the prospectuses, which Burke promised to send him, and thought that neither PW nor Burke would be able to trade on the account in the meantime.

Bissell alleged that in January 1991, without his authorization, the account name was changed to Mrs. Annabelle P. Bissell, JTWROS failing to properly reflect that Mrs. Bissell had passed away. Bissell further contended that without his authorization as representative of the estate, Burke sold 4,941 units of Nuveen Series 106 Tax-Exempt Bond Fund, which realized a \$443,701.00 gain, and used the proceeds from the sale to purchase 20,241 shares of PaineWebber Master Global Fund and 17,551 shares of MFS World-Wide Government Trust.

Bissell contended that Burke did not provide him with any prospectus for the PaineWebber Master Global Fund nor did Burke disclose to him the commission which Burke would receive for selling shares of that Fund or the "break points" in the commission fee schedule. Thus, Bissell contended that Burke's failure to disclose information constituted misrepresentation.

Bissell contended that Burke breached his fiduciary duties by engaging in unauthorized transactions which were inappropriate in light of Bissell's investment objectives. Bissell further contended that PW is equally and jointly liable for all of Burke's misconduct since PW negligently failed to supervise its employee and knew or should have known that trades in the account could not occur after Mrs. Bissell's death without the proper estate documentation.

Respondent PW maintained that, at all relevant times, Bissell authorized the trades at issue. PW also maintained that Bissell ratified the trades at issue because he did not complain about the alleged unauthorized transactions until nine months after the first alleged unauthorized transaction was completed.

PW asserted that Bissell gave Burke a Certified Death Certificate for Annabelle Bissell and a Certified Court Appointment of Bissell as the representative of the Estate. PW also asserted that under PW's policy, those documents were sufficient to give Bissell the authority to act on behalf of the Estate. PW further asserted that Bissell specifically agreed to the sale of some of the Nuveen funds at the meeting in January, 1991 and told Burke to use the proceeds to purchase the PaineWebber Master Global Fund and the MFS Fund. PW asserted that Bissell received confirmations and prospectuses that fully disclosed the commission fee structure, after these funds were purchased.

PW contended that Burke and Bissell communicated regularly after the purchase of the aforementioned mutual funds. PW also contended that Bissell received monthly statements which showed his account composition. PW further contended that the fact that Bissell did not complain until nine months later was an attempt to have PW act as a guarantor of his investments, a proposition that was factually and legally insupportable.

PW interposed a Cross Claim against Bissell for the full amount of any recovery by Claimant in the event PW was found liable.

### **RELIEF REQUESTED**

Claimant Bissell requested an award of \$266,854.00 plus pre- and post-award interest against PW and Burke jointly and severally. Claimant also requested punitive damages in such an amount as the arbitrators deemed appropriate to deter Respondents from future acts of misconduct such as those giving rise to this claim. Claimant further requested reasonable attorneys' fees, costs, expenses and disbursements incurred in pursuing this claim.

Respondents, PW and Burke, jointly requested that the case be dismissed in its entirety with prejudice. In the event PW was found liable, PW requested damages against Bissell for the full amount of any recovery. Respondent PW requested reimbursement of costs associated with defending this claim.

### **OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive, a conformed copy of the Award while the original remains on file with the NASD.

### **AWARD**

After considering the pleading, 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 PaineWebber, Incorporated, be and hereby is liable and shall pay Claimant, Estate of Annabelle P. Bissell, \$38,004.97 (Thirty Eight Thousand Four Dollars and Ninety Seven Cents), without interest, in actual damages.
2. All claims against Respondent Robert Burke are dismissed in their entirety.
3. Claimant's request for punitive damages is denied.
4. PW's counter-claim is denied.
5. Each party shall bear their own attorneys' fees and costs.

### **FORUM FEES**

Pursuant to Section 43C of the *Code of Arbitration Procedure*, the arbitrators have determined that the NASD shall retain the \$200 non-refundable filing fee previously deposited by Claimant and have assessed the following forum fees against Claimant:

8 hearing sessions x \$750.00 per session	=	\$6,000.00
minus Claimant's \$750.00 deposit	=	\$ 750.00
Total Outstanding	=	\$5,250.00

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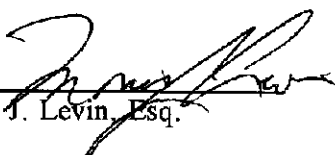
Claimant shall pay to the NASD \$5,250.00 representing the unpaid portion of the hearing session fees.

Fees are payable to the National Association of Securities Dealers, Inc.

**ARBITRATION PANEL**

Elizabeth K. Norsworthy, Esq.	-	Public Chairperson
Morris J. Levin, Esq.	-	Public Panelist
Linda A. Gelfand	-	Industry Panelist

Concurring Arbitrator's Signature

  
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Morris J. Levin, Esq.

NASD's Date of Decision: July 30, 1996

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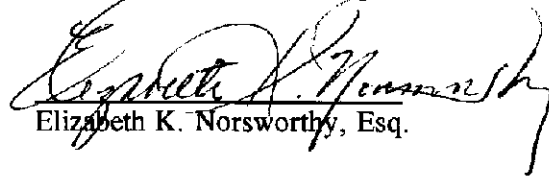
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Concurring Arbitrator's Signature

  
Elizabeth K. Norsworthy, Esq.

NASD's Date of Decision. July 30, 1996

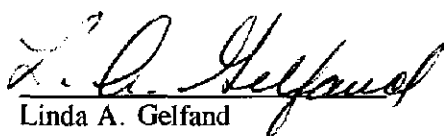
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Concurring Arbitrator's Signature

  
Linda A. Gelfand

NASD's Date of Decision: July 30, 1996