

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Commercial Bank (Grand Cayman), Ltd.

95-00320

Names of Respondents

PaineWebber, Inc.  
Wall Street Securities, S.A.  
Arturo Tapia

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REPRESENTATION

For Claimant, Commercial Bank (Grand Cayman), Ltd. ("Commercial Bank"): William R. Ponsoldt, jr., Esq., of Kohl, Metzger Spotts, P.A., Stuart, Florida.

For Respondents, PaineWebber, Inc. ("PW"), Wall Street Securities, S.A. ("WSS") and Arturo Tapia ("Tapia"): Steven R. Reininger, Esq., of Rasco & Reininger, P.A., Miami, FL.

CASE INFORMATION

Statement of Claim filed: 1/17/95.

Amended Statement of Claim filed: 4/1/96.

Claimant's Submission Agreement signed on: 12/19/94 by Emanuel Gonzalez Revilla, on behalf of Commercial Bank.

Statement of Answer filed by Respondent, PW: 5/4/95. PW's Submission Agreement/Corporate Acknowledgment signed on: 5/4/95 by Patricia Cowart, Esq., on behalf of P.W.

A Joint Statement of Answer filed by Respondents, WSS and Tapia on: 6/29/95.

Respondent, WSS's Submission Agreement/Corporate Acknowledgment signed on: 6/26/95 by Arturo Tapia on behalf of WSS.

Respondent, Tapia's Submission Agreement signed on: 6/26/95.

### **HEARING INFORMATION**

Hearing Dates/Sessions: 4-23-96/two (2) sessions.  
4-24-96/two (2) sessions.

Hearing Location: Fort Lauderdale, Florida.

### **CASE SUMMARY**

Claimant alleged that the Respondents failed to comply with the NASD rules of fair practice by offering for sale and selling investments at issue (Bankers Trust, NY corporate notes maturing March 15, 1999 with a 10.20% coupon and a yield to maturity of 10%) to Claimant through misrepresentations and omissions. Claimant further stated that Respondents violated these rules by inducing Claimant to purchase the investments at issue with the assurances that they were suitable investments for it, in light of its conservative investment needs. Claimant asserted the following charges against Respondents in the Statement of Claim: Misrepresentations and Omissions; Breach of Fiduciary Duty; Negligent Supervision; Violations of the Antifraud Provisions of the Securities and Exchange Act of 1934, as Amended; Breach of Contract; Negligence; and, Violation of the Rules of the NASD.

Respondents denied all allegations of wrongdoing contained in the Statement of Claim and maintained that the callable nature of the Banker's Trust bonds at issue was fully disclosed verbally at the time the purchase was consummated, confirmed in writing and reflected in each monthly statement received by Claimant, precluding any liability on behalf of Respondents. Further, Respondents asserted that Claimant could not recover damages in any event as it failed to mitigate its damages by selling the Bankers Trust Bonds either close to the time of purchase in April, 1990 when it was on notice of the call feature or in September, 1991 when it unquestionably knew of the call feature. Respondents stated that at both these times, had Claimant acted, no damages would have been incurred. Respondent, PW, asserted that, because it acted solely as a clearing agent on a disclosed basis, it could not be responsible for any of the alleged breaches by Respondent, Wall Street Securities.

### **RELIEF REQUESTED**

Claimant requested: damages in an amount in excess of \$160,000.00 excluding legal interest; statutory treble damages of an additional amount in excess of \$480,000.00; costs, expenses and disbursements, including reasonable attorney's fees; punitive damages over and above the compensatory and statutory damages in an amount to be determined by the Arbitrators; and, such other relief as the Panel deems just and proper.

Respondent, PW, requested that the demand for relief of Claimant be dismissed in its entirety with costs, including PW's fees and costs of these proceedings to be charged against Claimant and for such other and further relief as the Panel deems just and proper.

Respondents, WSS and Tapia, requested that the claims for relief by Claimant be dismissed in their entirety with costs, including those of the Respondents' attorney's fees and costs of these proceedings, to be charged against the Claimant and for such other relief as the Panel may deem just and proper.

### **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 conformed copies of the Award while the originals remain on file with the NASD.

### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, WSS and Tapia, are found not liable and, therefore, all claims against them are hereby dismissed.
2. Respondent, PW, is found liable and shall pay to the Claimant the amount of \$40,000.00.
3. Claimant's requests for costs, expenses, attorneys fees, punitive damages and treble damages are hereby denied.
4. Respondents' requests for attorney's fees and costs are hereby denied.
5. All other claims are denied.

### **OPINION**

The Panel found against PW, solely, for the reasons of faulty confirmations of trades and monthly statements wherein no data relative to Bond Call features were included on all confirmations. Also, PW is liable for a lack of supervision since the Latin/American desk was remiss in using the in-house "thirteen liners" as official confirms of purchase with all Bond Call data omitted.

### **OTHER COSTS**

The parties shall each bear their own costs and expenses incurred in connection with this proceeding, including attorney's fees.

**FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the Panel has assessed Forum Fees in the amount of \$4,000.00 (four (4) hearing sessions X \$1,000.00).

1. Respondent, PW, is hereby assessed forum Fees in the amount of \$4,000.00, \$1,000.00 of which shall be paid directly to the Claimant and the remaining \$3,000.00 shall be paid to the NASD, Inc.
2. The NASD shall retain the \$1,000.00 filing fee previously deposited by the Claimant.
3. The NASD shall retain the non-refundable filing fee of \$250.00 paid by the Claimant.
4. Respondent, PW, shall reimburse the Claimant \$250.00 for the non-refundable filing fee.
5. Respondent, PW, shall pay the \$500.00 non-refundable surcharge due and payable to the NASD.
6. Respondent, WSS, shall pay the \$500.00 non-refundable surcharge due and payable to the NASD.

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

**ARBITRATION PANEL**

**Concurring Arbitrators' Signatures**

/s/

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Anthony J. Titone, Esq.

Public/Chairman

/s/

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Alvin Shulklapper

Public/Panelist

/s/

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Lester H. Weinberg

Industry/Panelist

Date of Decision: **June 21, 1996**