

N.A.S.D. MODIFIED AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Juanita W. Childs

95-00357

Name of Respondent

PaineWebber, Inc.

CASE SUMMARY

In her 36 page claim filed with the National Association of Securities Dealers, Inc. on January 23, 1995, Pro Se Claimant Juanita W. Childs ("Claimant"), alleged that she filed a complaint against PaineWebber, Inc. ("PWI"), with the U.S. Federal District Court in 1990, complaint (#CV F 90 450 REC). Claimant further alleged that on September 28, 1990 the District Court dismissed the case and ordered that she file her complaint against PWI with the NASD Arbitration Department. Claimant contended that the District Court found that PWI's securities violation of May 1987, had an April 1989 discovery date, and PWI's failure to disclose and failure to tender her shares of Texaco Preferred Units in 1989 were the only arbitrable claims. Claimant further contended that on March 15, 1991, she followed the District Court's order and filed her complaint with the NASD which was assigned NASD Arbitration case #91-00986. Claimant alleged that on December 9, 1991, this case was unconstitutionally and unlawfully dismissed with prejudice as being stale by a panel of three NASD Arbitrators. Claimant further alleged that on November 8, 1993, the U.S. Federal Ninth Circuit Appellate Court reversed the Arbitrators' decision. The U.S. District Court then allegedly remanded the matter back to NASD Arbitration. Claimant contended that she refiled with the NASD and was assigned case #95-00357. Claimant further contended that none of her claims against PWI are barred by statute of limitations because equitable estoppel should apply.

Claimant's January 25, 1995 claim also alleged the existence of ancillary litigation with PWI in California State Court. She asserted that on June 22, 1990, she filed a "four year statute of limitations complaint against PWI in the Kern County Municipal Court for writing unlawful sales contracts in California. ..." Elsewhere in the claim, Claimant alleged the Kern County Superior Court declared her a vexatious litigant and imposed a fine against her. However, Claimant contended that the Superior Court's ruling was ultimately reversed by the California Court of Appeal, Fifth District. Claimant further contended that PWI's "crimes" were currently pending before the California Supreme Court.

In a later submission, Claimant alleged PWI illegally solicited and sold her 1,000 Mesa Preferred Units ("Mesa Units") and did not disclose that the investment was a limited partnership. Claimant contended PWI sold her the Mesa Units before properly registering them with the Securities and Exchange Commission. PWI allegedly lied in telling Claimant that the Mesa Units were a better investment than money markets. Claimant alleged that in May, 1987, PWI unlawfully solicited her business by recommending she purchase units of NRM Company Limited Partnership ("NRM"). Claimant further alleged that prior to her purchase of NRM Units she informed PWI that she "hated" limited partnerships and never wanted to purchase them again." NRM allegedly changed its name to Edisto after she purchased the units. Claimant contended PWI failed to disclose investment information concerning NRM n/k/a Edisto as is required by the Federal Securities laws and the State of California's Blue Sky laws.

Claimant alleged that in October, 1989, PWI deliberately failed to tender her shares for the Texaco Preferred C. ("Texaco") tender offer in disregard of her repeated requests to have them tendered. Claimant further alleged that PWI's failure to tender her Texaco shares was a violation of the Securities and Exchange Commission's "10(b)" laws. Claimant further contended that according to Federal Securities Laws "showing of damages is not essential to finding of manipulation of fraud provision of 17(a) of securities Act 15 USA 77(a)." Claimant further alleged that as a result of the above, she has suffered a loss for which the Respondent should be held liable.

Claimant alleged that PWI is a "liar" who hides and covers its crimes and defies the existence of the laws which govern their business as being laws not applying to them. Claimant further alleged that PWI uses its "client agreement" for the promotion of its crimes. Claimant contended that PWI uses arbitration to cheat and deprive its clients of the protection of U.S. laws. Claimant further contended in her motion filed with the U.S. District Court that PWI used the U.S. mail to promote its crimes by sending her an unconstitutional document. Claimant alleged that PWI's unconstitutional document requested dismissal of her 1991 NASD case and that this use of the mail constitutes mail fraud. Claimant alleged that as a result of the above, PWI has committed crimes against her for which it should be criminally prosecuted.

In her latest October 11, 1995 submission, Claimant asserted, inter alia, she "did not file [the instant arbitration claim] for money, [she] only took PWI's crimes filed with claim CV F 90 450 REC back to the NASD Arbitration again and filed [the instant arbitration claim] because [PWI] is a criminal and [PWI's] crimes pertaining to [her] claim need to be addressed in the Federal Court which apply to claim No. CV 90 450 REC."

Respondent PaineWebber, Inc., through its representative and in-house counsel, Katherine J. Pratt, Esq., denied each and every allegation of wrongdoing asserted by Claimant regarding the handling of her account at PWI. Respondent maintained that Cornell Arendt ("Arendt") managed Claimant's PWI account which was opened in February, 1986, with an inheritance of stock worth approximately \$108,000.00. Respondent contended the account was primarily income-oriented and in September, 1986, upon Arendt's recommendation, Claimant purchased 1,000 preferred Mesa Units which was publicly traded at \$13 1/4 per unit. Respondent maintained that at no time did Arendt indicate these units were stock. Further, the dividends were suspended after 3 1/4 years of the guaranteed 5 years because of problems experienced by Mesa Units and due to overall problems in the energy industry. Respondent contended that dividends are to be paid to holders of the preferred units on a priority basis. Respondent also contended that in March, 1990, Claimant had her units delivered out of her account.

Respondent maintained that in May, 1987, Claimant purchased 200 preferred units of NRM Energy Company Limited Partnership ("NRM") at \$19 7/8 per unit. Respondent further maintained that these units paid a dividend and were recommended because Arendt expected a better performance in the energy field and favored the less risky units offered by NRM. Respondent contended that Claimant redeemed 38 of these units before the remainder were converted to preferred shares of Edisto Resources Corp. ("Edisto") through an exchange offer in December, 1989. Respondent further contended that in March, 1990, Claimant told Steve Hill ("Hill"), the current account broker, to sell 21 shares of Edisto which left her with 146 shares which in turn, were delivered out of the account later that month. Respondent maintained that at the time the Edisto shares were delivered out of the account, Claimant had no loss on the investment. Respondent further maintained that in or about July or August, 1989, Arendt left PWI's employ and that prior to that time, Claimant never expressed dissatisfaction with the manner in which her account was handled.

Respondent maintained that Claimant has initiated at least five actions against PWI and that the sum and substance of the allegations have been identical. Respondent further maintained that in the previous NASD claim (Arbitration #91-00986), the panel of arbitrators determined that Claimant's claims were barred by applicable statutes of limitations. Respondent further maintained that the only other action pending between Claimant and PWI is the U.S. District Court action in the Eastern District of California (CV F 90 450 REC) which is stayed pending the outcome of this arbitration claim. Respondent contended that as a result of the above, it should not be held liable.

RELIEF REQUESTED

Claimant Juanita W. Childs, requested \$50.12 in actual damages and that criminal charges be brought against the Respondent.

Respondent PaineWebber, Inc., requested that the claims of the Claimant be dismissed.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator has considered and reviewed all of the documentation submitted by the parties concerning Claimant Juanita W. Child's request to have criminal charges brought against the Respondent PaineWebber, Inc. The Arbitrator has determined that Claimant's request for criminal prosecution falls outside the scope of the forum's jurisdiction and that she should file her request with the appropriate prosecuting authority.

AWARD

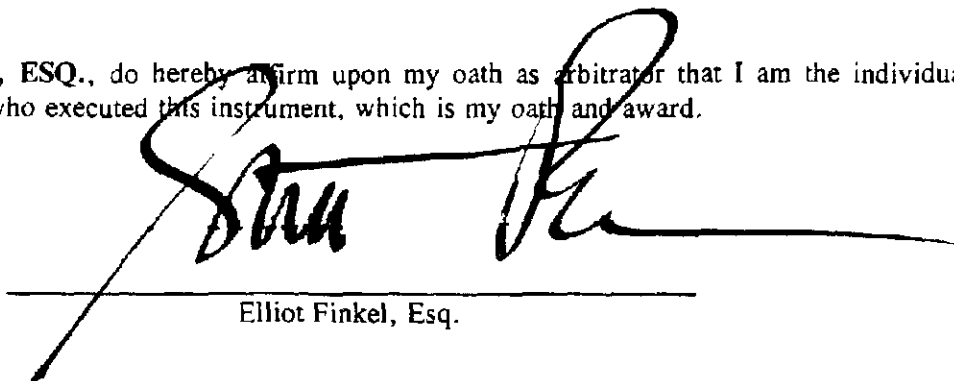
Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Elliot Finkel, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Juanita W. Childs, on January 18, 1995, and by the Respondent PaineWebber, Inc., on June 8, 1995.

And, the Arbitrator, having carefully read, and cautiously considered all evidence and arguments submitted, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of the Claimant Juanita W. Childs, against Respondent PaineWebber, Inc., are respectfully dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$30.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Juanita W. Childs, shall be retained by the NASD, Inc.

AFFIRMATION

I, **ELLIOT FINKEL, 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.

A large, stylized handwritten signature in black ink, appearing to read 'Elliot Finkel', is written over a horizontal line. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Elliot Finkel, Esq.

DATE OF MODIFIED DECISION: February 8, 1996