

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Fidelia W. Alexander, DVM

and

Case Number 95-00560

Names of Respondents

PaineWebber, Incorporated,
John Paul Godchaux
and Robert Emmett Kennedy

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about January 30, 1995 and amendment submitted on or about November 13, 1995, Fidelia W. Alexander, DVM ("Alexander") made allegations against PaineWebber, Inc. ("PaineWebber"), John Paul Godchaux ("Godchaux") and Robert Emmett Kennedy ("Kennedy") including, but not limited to, unauthorized trading, unsuitability, misleading and deceptive conduct and various violations of the Louisiana Blue Sky Laws. On or about September 13, 1993, the Claimant allegedly received a legal settlement in the amount of \$230,000.00 for an injury to her which resulted in total and permanent disablement. Claimant alleged that during a meeting with Kennedy and Godchaux on or about November 2, 1993 at the PaineWebber, Inc. New Orleans, LA office, she advised them of her lack of sophistication and of her desire to protect her limited funds yet earn a modest return without material risk. Respondents allegedly represented that they understood the Claimant's concerns and needs and would take affirmative steps to protect Claimant's funds until Claimant was in a position to better assess her future financial objectives. According to the Claimant, she was induced by Kennedy and Godchaux to open a Resource Management account with PaineWebber on or about November 2, 1993 and to deposit \$230,000.00. As alleged, shortly after opening the account, Claimant contacted Kennedy for the purpose of withdrawing funds to purchase a home yet Kennedy advised Claimant to not purchase the property adding that he had invested \$30,000.00 in a special account which would earn a 10% return annually. Claimant contended that Kennedy failed to disclose that he had purchased 2,000 shares of PaineWebber Premier High Income Trust, Inc. without authority for the Claimant in order to meet his monthly sales quota. According to the Claim, Kennedy told Alexander that additional funds had been invested in another special account yet he did not advise Claimant that he had purchased 3,500 shares of Putnam Premier Income trust and 5692 shares of Oppenheimer Strategic Income Fund. Claimant alleged that the Respondents failed to provide her with monthly statements until February of 1994, failed to provide her with

prospectuses of the PaineWebber High Income Trust and the Oppenheimer Strategic Income Fund until the Spring of 1994 and never sent her a prospectus of the Putnam Premier Income Trust. The Claimant alleged that contrary to Kennedy's representations, Kennedy had earned commissions on the investments made in the Claimant's account.

In their Joint Statement of Answer filed with the NASD on or about June 2, 1995, PaineWebber, Inc., John Paul Godchaux and Robert Emmett Kennedy denied the allegations contained in the Statement of Claim and denied any monetary liability to the Claimant. Respondents asserted many affirmative defenses including, but not limited to, estoppel, ratification, laches, statute of limitations, failure to state a claim, failure to mitigate, Claimant willingly and voluntarily assumed the risks of investing and PaineWebber maintained an adequate and reasonable system of supervision and control over its employees.

RELIEF REQUESTED

Claimant requested an award in the amount of \$6,700.00 in actual damages plus attorneys' fees, costs and expenses.

Respondents requested that the claims of the Claimant be dismissed in their entirety with costs assessed against the Claimant.

OTHER ISSUES CONSIDERED & DECIDED

On or about November 13, 1995, Claimant filed a request for leave to file and amendment to the Statement of Claim in accordance with Section 39 of the Code of Arbitration Procedure. The amendment to the claim included a reduction in the actual damages sought from \$15,779.74 to \$6,700.00 and a conversion of the case from Section 25 of the Code to Section 13, waiving the Claimant's right to a hearing. After reviewing and considering the request and all related documents, the arbitrator determined that the request was granted.

The parties submitted a request dated March 25, 1996 asking that no further action be taken in this matter until further notice from the parties. After reviewing the request and all relevant submissions, the arbitrator ruled that the parties could file additional submissions on or before June 30, 1996 and after that date, the arbitrator would render a final and binding award.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Michael E. McGown, Esq. was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on January 31, 1995, by Respondent, PaineWebber, Inc. on June 2, 1995, by Respondent, John Paul Godchaux on May 24, 1995 and by Respondent, Robert Emmett Kennedy on May 24, 1996.

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

1. The Statement of Claim and amendment are hereby dismissed and denied in their entirety;
2. Each party shall bear its own costs, expenses and attorneys' fees incurred in this matter except for those specifically enumerated herein;
3. All relief not specifically granted herein is hereby denied;
4. The \$75.00 claim filing fee and the \$75.00 hearing session deposit previously deposited with the National Association of Securities Dealers, Inc. by the Claimant, Fidelia W. Alexander, DVM shall be retained by the NASD. Respondent, PaineWebber, Inc. is hereby liable for and shall pay to the NASD the sum of \$200.00 for the member surcharge assessed pursuant to Section 45 of the Code.

AFFIRMATION

I, **Michael E. McGown, 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.

Michael E. McGown, Esq.
Signature of Arbitrator

Date served by the NASD: August 2, 1996

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

1. The Statement of Claim and amendment are hereby dismissed and denied in their entirety;
2. Each party shall bear its own costs, expenses and attorneys' fees incurred in this matter except for those specifically enumerated herein;
3. All relief not specifically granted herein is hereby denied;
4. The \$75.00 claim filing fee and the \$75.00 hearing session deposit previously deposited with the National Association of Securities Dealers, Inc. by the Claimant, Fidelis W. Alexander, DVM shall be retained by the NASD. Respondent, PaineWebber, Inc. is hereby liable for and shall pay to the NASD the sum of \$200.00 for the member surcharge assessed pursuant to Section 45 of the Code.

AFFIRMATION

I, Michael E. McCown, 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


Signature of Arbitrator

Date served by the NASD: