

AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Diana Paolucci Corporation

95-00730

Names of Respondents

PaineWebber, Inc.
Ramon Almonte

REPRESENTATION

For Claimant Diana Paolucci Corporation ("Paolucci"): Bruce A. Katzen, Esq. of Kluger, Peretz, Kaplan & Berlin, P.A., Miami, Florida.

For Respondents PaineWebber, Inc. ("PaineWebber") and Ramon Almonte ("Almonte"): Evan J. Charkes, Esq. of PaineWebber, Inc., Weehawken, N.J. and Guillermo J. Bobonis, Esq. of Bobonis, Bobonis & Rodriguez Poventud, San Juan, Puerto Rico.

CASE INFORMATION

Statement of Claim filed: February 8, 1995.

Claimant's Submission Agreement signed on: December 30, 1994 by Francisco Campolieto on behalf of the Corporation.

Respondent PaineWebber's Submission Agreement/Corporate Acknowledgment signed on: March 6, 1995 by Miguel A. Ferrer on behalf of PaineWebber.

Respondent Almonte's Submission Agreement signed on: March 6, 1995.

HEARING INFORMATION

On February 6, 1996 and February 9, 1996 pre-hearing telephonic conferences lasting three (3) sessions were conducted with the Chairperson of the arbitration panel.

On December 9, 10, and 11, 1996 and March 4, 5, 6, 10, and 11, 1997 hearings lasting sixteen (16) sessions were conducted in Fort Lauderdale, Florida.

CASE SUMMARY

Claimant alleged that Respondents committed fraud, breach of fiduciary duty, negligence and breach of contract arising from unauthorized trading on margin, unsuitable trading, excessive trading and failure to supervise on the part of Respondent PaineWebber, in connection with the purchase of TVA government bonds for Claimant's account at PaineWebber. Claimant maintained that as a result of the unauthorized trading, Claimant suffered capital losses of over \$440,000.00, margin interest of \$103,000.00 and commissions of \$111,000.00.

Respondents denied the allegations of wrongdoing contained in the Statement of Claim and alleged that on November 9, 1993 Claimant ordered the cash purchase of \$750,000 TVA 6 1/8% 203 bonds; that on or about October 10, 1993 Claimant's principal, Francisco Campolieto, called Respondent Almonte and after discussing the particulars of the trade, ordered the purchase of 1,000,000 TVA 6 1/8% 203 and 1,000,000 TVA 0.0% step up to 7 1/4% on 203; that it was agreed that the purchase price of approximately \$1.5MM would be paid off at the end of November, 1993 upon the sale of Campolieto's interests in two service stations in Argentina; and, that the ATV bonds were purchased on November 9 and 23, 1993, respectively. Respondents maintained that Claimant's principals never sent the cash to pay for the bonds and credit was extended by PaineWebber to carry the positions on margin; that in early 1994 the price of the TVA bonds started to decline as interest rates began to rise; that, meanwhile, Claimant's principals decided to invest the sale proceeds of the two service stations in other ventures in Argentina and to transfer its PaineWebber account in San Juan to Prudential Securities, Inc. in Miami, Florida; that Claimant's principals reneged on the November 1993 trades, ordered the sale of the TVA bonds through Prudential Securities in Miami, and then complained that the November 1993 trades were unauthorized in order to transfer the burden of the loss to Respondents.

RELIEF REQUESTED

Claimant requested compensatory damages including the loss of principal in the account and the loss of a reasonable rate of return on all of Claimant's capital in excess of \$440,000.00; rescission of all unauthorized trades; statutory and punitive damages; prejudgment interest; attorneys' fees and costs; and, such other and further relief as is just and proper.

Respondents requested dismissal of the claim plus costs and attorneys' fees.

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 NASD Regulation, Inc.

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 PaineWebber and Almonte are found liable, jointly and severally, and shall pay to the Claimant the amount of \$150,000.00, inclusive of prejudgment interest.
2. Respondents PaineWebber and Almonte are further found liable, jointly and severally, and shall pay to the Claimant costs in the amount of \$44,500.00 pursuant to the Affidavit of Costs submitted on behalf of the Claimant. This amount includes reimbursement of the \$750.00 hearing session deposit previously paid by the Claimant to NASD Regulation, Inc.
3. Claimant's requests for rescission, statutory and punitive damages and attorneys' fees are denied.
4. Respondents' requests for costs and attorneys' fees are denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure ("Code"), the panel has assessed forum fees in the amount of \$12,900.00 (sixteen (16) hearing sessions x \$750.00 + three pre-hearing sessions x \$300.00).

1. Respondents PaineWebber and Almonte are assessed, jointly and severally, forum fees of \$12,900.00 for which NASD Regulation, Inc. shall retain the \$750.00 previously paid by Claimant leaving a balance due to NASD Regulation, Inc. of \$12,150.00.
2. NASD Regulation, Inc. shall retain the claim filing fee of \$200.00 paid by the Claimant.
3. Respondent PaineWebber shall pay to NASD Regulation, Inc. the member surcharge of \$350.00 pursuant to Rule 10333 of the Code.

Fees are payable to NASD Regulation, Inc.

ARBITRATION PANEL

Concurring Arbitrators' Signatures

/s/

Jerome A. Pivnik, Esq.

Public/Chairperson

/s/

Gordon Keith Grandy

Public/Panelist

/s/

David P. Wardwell

Industry/Panelist

Date of Decision: May 13, 1997