

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of Arbitration Between

Name of Claimants

Kurt Levy
Ruth Levy

95-00741

Name of Respondents

PaineWebber, Inc.
Neal A. Leschel

REPRESENTATION

For Claimants Kurt Levy and Ruth Levy ("Claimants") appeared Steven I. Adler, Esq. of the law firm of Cole, Schotz, Meisel, Forman & Leonard, P.A. located in Hackensack, New Jersey.

For Respondents PaineWebber, Inc. ("PaineWebber") and Neal A. Leschel ("Leschel") appeared Alice K. Jump, Esq., Senior Attorney at PaineWebber, Inc.

CASE INFORMATION

Statement of Claim filed: February 9, 1995.

Claimants' Submission Agreement signed on: February 3, 1995.

Joint Statement of Answer filed by PaineWebber and Leschel on: April 7, 1995.

PaineWebber's Submission Agreement signed on: December 14, 1995.

Leschel's Submission Agreement signed on: December 14, 1995.

HEARING INFORMATION

Hearing Date/Sessions: December 14, 1995 - Two Sessions

The hearing was held at the offices of the National Association of Securities Dealers, Inc. located in New York, New York.

CASE SUMMARY

Claimants alleged that, in or around February 1994, Mr. Levy's IRA account was transferred from PaineWebber's New York office to its Hackensack, New Jersey office and that Leschel was assigned as his broker. Claimants further alleged that, pursuant to Leschel's recommendation, they forwarded their stock certificates to PaineWebber's office to assure Leschel prompt access to them if they ever wished to sell the stock. Claimants further alleged that they informed Leschel that they relied upon the dividend income from their stock and that they had no desire to purchase speculative stock or stock that was not blue chip quality.

Claimants alleged that Leschel opened a joint account for them although they had not yet executed the required forms. Claimants further alleged that this account was non-discretionary, which required Leschel to obtain their consent prior executing any transactions in the account. Claimants further asserted that, without their knowledge, authorization or consent, Leschel sold their shares of PSEG, Borden, MPC, Converse and Exxon and purchased Future German Fund, ALC Communications, Arrow Electronics and Dr. Pepper. Claimants further asserted that the stocks purchased were not blue chip type investments, that they generally did not pay dividends and that they were not as conservative as the stocks that they previously owned.

Claimants alleged that, without their authorization, Leschel also placed stop loss orders on the stock he purchased and that when the price of ALC Communications dropped it was sold at a loss in excess of \$3,000.00. Claimants alleged that Mr. Levy subsequently visited PaineWebber's office and complained about the unauthorized transactions which all occurred at a time when they had not yet even signed a form to open a joint personal account. In addition, Claimants alleged that the shares of Exxon that were sold were owned by Ruth Levy only and that she never had an account solely in her name at PaineWebber.

Claimants alleged that Respondents' unauthorized trading constituted a breach of contract, a conversion of their stock and a violation of NASD regulations. Claimant also alleged that Respondents breached their fiduciary duties and other obligations owed to them and that Respondents failed to exercise ordinary care in the handling, management and supervision of their account. In addition, Claimants alleged that PaineWebber was under a duty to examine, supervise and review the conduct of its employees and that PaineWebber breached these duties, was negligent and ratified and adopted the improper actions of Leschel and was otherwise liable on the basis of respondeat superior.

Respondents maintained Leschel had at least three personal meetings with Claimant's regarding their investment goals before any transactions were made in their account and that Leschel took great care to fully discuss with Claimants their investment goals. Respondents further maintained that during the meetings Claimants expressed some dissatisfaction with their common stock holdings and told Leschel that they wanted greater growth. Respondents also maintained that Leschel explained to Claimants the use of stop loss orders in maintaining a stock portfolio and that Claimants clearly understood that when a stop loss order was activated the shares would be sold at the market trigger price.

Respondents maintained that, on or about May 5, 1994, Leschel telephoned Mr. Levy and

recommended that Claimants sell their shares of Montana Power and Electric, PSEG, Exxon, Converse Technology and Borden and that they purchase ALC Communications, Arrow Electronics, Dr. Pepper and Future Germany Fund. Respondents alleged that Mr. Levy authorized all of these transactions. Respondents further alleged that, pursuant to Mr. Levy's prior agreement, a stop-loss order was executed on ALC Communications on or about May 10, 1994. Respondents maintained that, after the sale, Mr. Levy complained that he lost money, but never said that the transaction was unauthorized.

Respondents maintained that Mr. Levy later called to complain about the interest on his account. Respondents further maintained that they explained to Mr. Levy that the firm required a W-9 form in order to release back-up withholding and credit interest on the cash balance, but that Mr. Levy became abusive and, as a result, the branch manager asked Mr. Levy to transfer his accounts out of PaineWebber.

RELIEF REQUESTED

Claimants requested damages not to exceed \$50,000.00, punitive damages, interest, costs, reasonable attorneys' fees and such other and further relief as the arbitration panel deems just and equitable under the circumstances.

Respondents requested that the Statement of Claim be dismissed with prejudice and that they be awarded their costs.

OTHER ISSUES CONSIDERED AND 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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. All claims against PaineWebber and Leschel be and hereby are dismissed in their entirety.
2. Each party shall bear their own costs, including attorneys' fees.
3. All other claims are hereby denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$120.00 non-refundable filing fee previously submitted by

Claimants and have assessed the following forum fees:

2 hearing sessions x \$400.00 = \$800.00

1. Claimants be and hereby are liable for the sum of \$400.00, representing one-half of the total amount of forum fees assessed. Claimants previously deposited \$400.00 with the NASD and, therefore, Claimants owe nothing NASD.
2. PaineWebber be and hereby is liable and shall pay to the NASD the sum of \$400.00, representing one-half of the total amount of forum fees assessed.

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

ARBITRATORS' SIGNATURES

Romeo J. Barros

Romeo J. Barros, Esq.
Public Chairperson

Neil J. Carey
Public Arbitrator

Larry A. Kimmel
Industry Arbitrator

Date of Decision: February 5, 1996

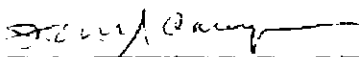
I, Romeo J. Barros, Esq., do hereby affirm that this is my decision in the above-captioned matter.

Romeo J. Barros

Romeo J. Barros, Esq.

ARBITRATORS' SIGNATURES

Romeo J. Barros, Esq.
Public Chairperson

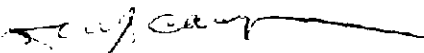


Neil J. Carey
Public Arbitrator

Larry A. Kimmel
Industry Arbitrator

Date of Decision: February 5, 1996

I, Neil J. Carey, do hereby affirm that this is my decision in the above-captioned matter.

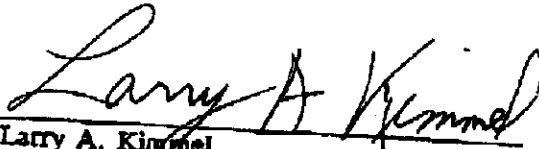


Neil J. Carey

ARBITRATORS' SIGNATURES

Romeo J. Barros, Esq.
Public Chairperson

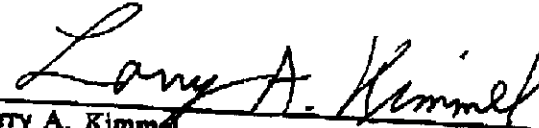
Neil J. Carey
Public Arbitrator



Larry A. Kimmel
Industry Arbitrator

Date of Decision: February 5, 1996

I, Larry A. Kimmel, do hereby affirm that this is my decision in the above-captioned matter.



Larry A. Kimmel