

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Charles J. Mager

95-00770

Name of Respondents

PaineWebber, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 14, 1995, Claimant Charles J. Mager, who appeared Pro Se, alleged that he purchased 200 shares of Phoenix Laser ("PHX") and 200 shares of ATRIX Corp. ("ATRIX") stock through Mr. Hartken, a broker at Respondent PaineWebber, Inc. Claimant further alleged that Mr. Hartken made a number of misrepresentations about these stocks. Claimant contended that Mr. Hartken misrepresented to him that both PHX and ATRIX were PaineWebber, Inc. recommended stocks and were of high quality and not speculative. Claimant further contended that Mr. Hartken misrepresented to him that he was very familiar with PHX and ATRIX, but in fact he knew almost nothing about these companies. Claimant alleged that Mr. Hartken told him that PHX and ATRIX stock would at least double in value. Claimant further alleged that he told Mr. Hartken that he does not like to speculate. Claimant contended that although most of his problems and loss of investment came from Mr. Hartken, Respondent "is responsible for employing him". In a reply, Claimant further contended that if on his PaineWebber new account documentation the primary objective was put as speculation it was done without his knowledge or approval. Claimant alleged that his investment in Basic Earth Science Systems was purchased more than ten years ago and if it was speculative then, he did not know it. As a result of the above, Claimant alleged that he has suffered damages for which the Respondent should be held liable.

Respondent PaineWebber, Inc., through its in-house counsel, Lisa Catalano Tillem, Esq., Weehawken, NJ, maintained that Claimant, upon opening his account, indicated that his primary investment objectives, in order of priority, were speculation, growth, income and investment grade. Respondent further maintained that Claimant represented his net worth exclusive of residence to be \$110,000.00, his annual income to be \$65,000.00, and that he had 20 years of

trading experience trading equities and bonds. Respondent contended that at all relevant times, Claimant had full knowledge of all material facts concerning his account with Respondent, and knew and understood the risks associated with the investments made in his account. As a result of the above, Respondent maintained that it should not be held liable in this matter.

RELIEF REQUESTED

Claimant Charles J. Mager requested \$5,050.88 in actual damages.

Respondent PaineWebber, Inc. requested that the claims of the Claimant be dismissed, and that costs, expenses and attorneys fees be assessed against Claimant.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single public arbitrator, Murray Sommer, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on February 1, 1995 and by the Respondent on March 31, 1995.

And, 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 claims of Claimant Charles J. Mager against Respondent PaineWebber, Inc. are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.

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AFFIRMATION

STATE OF *New York*

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ss:

COUNTY OF *New York*

I, *Murray I. Sommer*, do hereby affirm, pursuant to Article 7507 of the Civil Procedure Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

Murray I. Sommer

Signature of Arbitrator

DATE OF DECISION: September 29, 1995