

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Dale F. and Catherine Barber

95-00871

Name of Respondents

PaineWebber, Inc.  
Michael J. Marasco

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**CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc. on February 21, 1995, Claimants Dale F. and Catherine Barber ("Claimants"), through their representative, Christopher D. Barber, alleged that Respondents PaineWebber, Inc. ("PWI"), and Michael J. Marasco ("Marasco"), on February 28, 1994, failed to follow their instructions to sell 2,000 MCI stock and then subsequently made two unauthorized sales of those shares in April of 1994. Claimants further alleged that Marasco executed the required MCI Mail Script computer message advising MCI Treasury Services of the exercise of the stock option and the sale. Claimants contended that the Mail Script would not have been generated unless a sale at a specified price had been made. Claimants further contended that Marasco had made several trades for them like this one in the past and that they expected to receive the proceeds from the sale about one month later. Claimants alleged that they did not receive the proceeds when expected and upon contacting Marasco they were told that the transfer had not been made. Claimants further alleged that they told Marasco to transfer some funds to another account, so that they would have funds for a tax liability. Claimants contended that the Respondents, without authorization, sold 2,000 shares of the MCI stock in April of 1994. Claimants further contended that initially PWI expressed an intention to honor the sale that should have been made in February of 1994, but later decided not to compensate them. Claimants alleged that as a result of the above, they have suffered a loss for which the Respondents should be held liable.

Respondents PaineWebber, Inc. and Michael J. Marasco, through their representative and in-house counsel, Lisa Catalano Tillem, Esq., maintained that on February 28, 1994, Dale F. Barber ("Barber") placed an order to sell 2,000 shares of MCI Communications Corp. at a limit of \$27.50. Respondents further maintained that it was the practice of Barber to place limit orders and that he placed this same order on March 1st and March 2nd, but did not make the sale. Respondents contended that because the Claimants had transferred funds from their account, a margin debit balance incurred and 1,200 shares of MCI stock were liquidated to bring the account within Regulation-T standards. Respondents further contended that MCI's first quarter earnings were announced on April 21st, and Marasco sold another 800 shares based on a signed Letter of Intent and on prior discussions with Barber. Respondents alleged that as a result of the above, they should not be held liable.

**RELIEF REQUESTED**

Claimants Dale F. and Catherine Barber, requested \$8,184.89 in actual damages.

Respondents PaineWebber, Inc. and Michael J. Marasco, requested that the claims of the Claimants be dismissed.

**OTHER ISSUES CONSIDERED AND DECIDED**

The Arbitrator reviewed and considered all documentation filed by the parties concerning the Respondents' Motion to Strike Claimants' response to Respondents' Statement of Answer. The Arbitrator denied the Motion.

**AWARD**


Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Carol J. Zamperini, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants Dale F. and Catherine Barber, on February 16, 1995, and by the Respondent PaineWebber, Inc., on March 30, 1995, but not by Respondent Michael J. Marasco, as required by Sections 12 and 13 of the NASD Code of Arbitration Procedure.

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 Respondents PaineWebber, Inc. and Michael J. Marasco, are jointly and severally and shall pay to the Claimants Dale F. and Catherine Barber, \$7,535.00 in actual damages.
2. The Respondents PaineWebber, Inc. and Michael J. Marasco, are jointly and severally and shall pay to the Claimants Dale F. and Catherine Barber, interest at the rate of 8% per annum from February 24, 1994, to the date of payment of the Award.
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Dale F. and Catherine Barber, shall be retained by the NASD, Inc. The Respondents PaineWebber, Inc. and Michael J. Marasco, are jointly and severally and shall pay to the Claimants Dale F. and Catherine Barber, \$75.00 as reimbursement of one-half of the filing fee.
5. All other relief requests are denied.

**AFFIRMATION**

I, **CAROL J. ZAMPERINI**, 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.

  
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Carol J. Zamperini

DATE OF DECISION: November 27, 1995