

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Norman and Marcia Brooks

95-01402

Name of Respondents

PaineWebber, Inc.  
James E. Bandler  
Ladenburg, Thalmann & Co., Inc.

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 20, 1995 Claimants Norman and Marcia Brooks ("Claimants"), who appeared Pro Se, alleged that it held account #TW 27028 53 with Respondent Ladenburg, Thalmann & Co., Inc. ("LTCl"), and that its account representative Respondent James E. Bandler, ("Bandler") recommended that they buy shares of IDG which they followed to their detriment. Norman Brooks ("Brooks") further alleged that Bandler advised him that the IDG stocks were going to become much higher and therefore purchased 2,000 shares. Brooks contended that he was convinced that Bandler was running his own business with stock that he or someone in his family owned at very low prices and he believed this to be fraudulent practices. Claimants further contended that Bandler made unauthorized transactions when he "took the liberty" and sold 1000 shares of Stateside Energy ("SE") without their permission. Claimants alleged that Bandler committed an error when he purchased shares of Promark stock when they requested Optimark stock and when asked to correct his error, he said he could not do it. Claimants further alleged that they have suffered a loss and therefore Respondents should be held liable.

Respondents Ladenburg, Thalmann & Co., Inc. and Paine Webber, Inc. ("Respondents"), through its representative and in-house counsel, Robert B. Weintraub, Esq., maintained that Claimants accepted and ratified each and every transaction prior to purchase and sale. Respondents further maintained that prior to arbitration, the NASD reviewed the facts and "concluded that the evidence obtained does not sufficiently establish a violation of securities regulations" and Claimants have not shown anything else. LTCl contended that the alleged "unauthorized" sale of SE stocks was canceled and the shares were put back into his account. LTCl further contended that Bandler admits that IDG was "strictly [his] idea" and not Ladenburg's. Respondents alleged that Claimants' damage calculations are incorrect and total only \$321.50 or \$1932.50 and therefore they should not be held liable.

Respondent James E. Bandler, who appeared Pro Se, maintained that on February 1, 1993 Brooks called him and asked him about both Promark and Eyetel stocks and on that date he ordered 1,000 shares of each. Bandler further maintained that he did recommend IDG after visiting the company and that the

recommendation was his and not Ladenberg's. Bandler contended that Brooks called him after seeing a commercial about Stateside Energy and told him to buy 1,000 shares which he did. Bandler further contended that after SE announced its unsuccessful oil drilling and the stock started to nose dive, he tried to call Brooks but was unsuccessful and he did "take the liberty" of selling his SE shares along with his and his other clients. Bandler maintained that prior to arbitration, the NASD completed its investigation and found no securities regulations and therefore he should not be held liable.

In a counterclaim, James E. Bandler alleged he is entitled to payment to offset his financial losses in connection with the claim filed against him.

In a reply to the counterclaim, Norman and Marcia Brooks maintained the Respondent is not entitled to recover any damages from them.

### **RELIEF REQUESTED**

Claimants Norman and Marcia Brooks, requested \$10,000.00 in actual damages.

Respondents Ladenburg, Thalmann & Co., Inc., James E. Bandler and Paine Webber, Inc, requested that the claims of the Claimants be dismissed.

Respondent James E. Bandler requested \$10,000.00 actual damages in a counterclaim.

Norman and Marcia Brooks requested the counterclaim against them be dismissed.

### **AWARD**

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Monica I. Salis, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on March 13, 1995 and by the Respondents Ladenburg, Thalmann & Co., Inc. and Paine Webber, Inc., on September 28, 1995 and not by respondent James E. Bandler 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 claims of the Claimants Norman and Marcia Brooks against Respondents Ladenburg, Thalmann & Co., Inc, James E. Bandler, and Paine Webber, Inc., are dismissed in their entirety.
2. The Counterclaim of Respondent James E. Bandler against Norman and Marcia Brooks is dismissed.
3. The parties shall bear their respective costs.
4. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.

AFFIRMATION

STATE OF

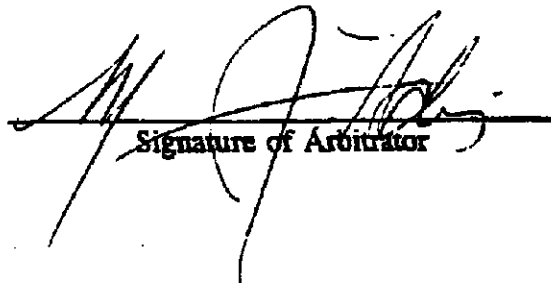
Florida

} ss:  
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COUNTY OF

Broward

I, Monica I. Salis, 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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Signature of Arbitrator

DATE OF DECISION:

March 29, 1996