

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Names of Claimants

William J. Ragusin
and Rita F. Childers

and

Case Number 95-01492

Names of Respondents

PaineWebber, Incorporated,
Christopher Zangari
and Alan Spierer

REPRESENTATION OF PARTIES

William J. Ragusin and Rita F. Childers ("Claimants") were represented by Charles A. Lucido, Esq. of Dallas, Texas.

PaineWebber, Inc., Christopher Zangari and Alan Spierer ("Respondents") were represented by William B. Federman, Esq. of Day, Edwards, Federman, Propester & Christensen, P.C. in Oklahoma City, Oklahoma.

CASE INFORMATION

The Statement of Claim was filed on or about March 21, 1995.

The Submission Agreement of the Claimants was signed on March 21, 1995.

The Joint Statement of Answer and Motion to Dismiss was filed by all Respondents on or about June 28, 1995.

The Joint Counter-Claim was filed by the Respondents on or about January 29, 1996.

The Submission Agreement of Respondent, PaineWebber, Inc. was signed by Romaine L. Gardner, First Vice President and Managing Partner on July 13, 1995.

The Submission Agreements of Respondents, Christopher Zangari and Alan Spierer were executed on July 27, 1995.

The Claimant's Response to the Motion to Dismiss was filed on or about July 24, 1995.

The Claimants' Response to the Counter-Claim was filed on or about February 12, 1996.

HEARING INFORMATION

The hearing was held in Oklahoma City, OK on the following dates:

- February 27, 1996 for two (2) sessions
- February 28, 1996 for two (2) sessions
- February 29, 1996 for two (2) sessions

In addition, the hearing continued by telephone conference call on April 23, 1996 for one (1) session.

CASE SUMMARY

In the Statement of Claim, William J. Ragusin ("Ragusin") and Rita F. Childers ("Childers") alleged that PaineWebber, Inc. ("PaineWebber"), Christopher Zangari ("Zangari") and Alan Spierer ("Spierer") breached their fiduciary duty to invest the Claimants' monies in a prudent, conservative manner with a primary goal of preservation of capital. The Claimants alleged that Zangari contacted Ragusin in 1993 to solicit the transfer of the Claimants' accounts from another brokerage firm. As alleged, Claimants relied on statements made by Zangari concerning his ability to offer superior investment advice as well as other representations. Thereafter, the Claimants transferred their accounts to PaineWebber at the end of 1993. In January and February of 1994, the Claimants allegedly sold numerous securities based upon the Respondents' analysis and recommendations. According to the Claimants, Zangari and Spierer placed \$350,000.00 of the Claimants' monies into two foreign funds maintained by PaineWebber named PaineWebber Atlas Global Growth Fund D and PaineWebber Europe Growth Fund. Claimants alleged that the Respondents exposed them to further foreign risk by investing \$73,591.00 in Telefonos de Mexico stock and \$112,986 in four other foreign stocks called Aquitaine ADR's, Imperial Chemical Ind ADR's, Global Privatization Fund and Moore Corp Ltd. Claimants claimed that they relayed their concerns about the riskiness of foreign investments to the Respondents and informed the Respondents that their investment objectives were growth and income.

In their Statement of Answer and Counter-Claim, PaineWebber, Inc., Christopher Zangari and Alan Spierer denied the allegations set forth in the Statement of Claim. The Respondents specifically stated that Ragusin was a sophisticated investor with over thirty years of experience. The Respondents contended that Ragusin had a power-of-attorney and complete responsibility and

control over the trading, investment strategy and management of Childers' accounts and that he had a fiduciary duty to ensure that the transactions were appropriate, a duty to notify the Respondents if a transaction was inappropriate and an independent duty to supervise and manage the accounts. The Respondents asserted the following affirmative defenses:

1. The Statement of Claim failed to state a claim upon which relief may be granted;
2. Claimants had or should have had full knowledge of all material facts concerning the investments they made, including the nature of the investments and associated risks;
3. Claimants controlled and authorized the execution of all transactions in their accounts and, therefore, were estopped from bringing the action;
4. Claimants could not recover anything against Respondents because they ratified all the activity in their accounts;
5. Respondents did not make any misrepresentations or omissions of material facts with respect to the investments;
6. Claimants knew of any alleged untruths or omissions and were therefore barred from bringing the action;
7. To the extent any losses or diminution in the value of Claimants' investments had occurred, Respondents were not liable for such losses or diminution because they were within the risks Claimants chose to assume;
8. To the extent Claimants' investments had diminished in value, such diminution was the result, in whole or in part, of the unforeseen price fluctuations in the securities markets over which Respondents had no control and in which Claimants knowingly and willingly participated;
9. The purported wrongdoing on the part of the Respondents was not the proximate cause of the losses for which Claimants sought recovery;
10. Claimants had not incurred any damages arising from the actions of Respondents;
11. Claimants' comparative fault, lack of diligence and failure to prudently conduct their own affairs barred any recovery of damages;
12. Claimants were barred from recovery because they failed to mitigate their losses;
13. Claimants' allegations failed because they did not sustain any loss or damage attributable to Respondents;
14. Claimants' allegations failed because Claimants did not justifiably rely upon any alleged misstatements or omissions by Respondents; and
15. Claimants' accounts were not invested in contradiction to their investment objectives.

RELIEF REQUESTED

Claimants requested an award in the amount of \$260,200.00 in actual damages plus interest and attorneys' fees.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded a judgement for contribution and indemnification against William Ragusin and that they be awarded costs including attorneys' fees and expert witness expenses.

OTHER ISSUES CONSIDERED & DECIDED

The Respondents filed a Motion for Leave to File a Counter-Claim on or about February 5, 1996. On or about February 18, 1996, the panel of arbitrators reviewed the Motion and Claimants' Response dated February 12, 1996 and decided to grant the Motion.

After the Claimants indicated that they had completed their direct case on February 29, 1996, the arbitrators decided that they would hear oral arguments from the parties on the Respondents' Motion to Dismiss by telephone conference call on April 23, 1996. Prior to the April 23, 1996 hearing, the parties filed written briefs in support of their respective positions.

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains 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. The Statement of Claimant filed by the Claimants is hereby denied in its entirety;
2. The Counter-Claim filed by the Respondents is denied in its entirety;
3. The parties shall bear their own costs including attorneys' fees except for those specifically enumerated herein; and
4. Any relief not specifically granted is hereby denied in its entirety.

FORUM FEES

Forum fees are calculated at the rate of \$750.00 per hearing session. There were seven (7) sessions x \$750.00 = \$5,250.00 in forum fees. Pursuant to Section 43(b) of the NASD Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Section 43(c) of the Code, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$200.00 and shall retain as forum fees the hearing session deposit in the amount of \$750.00 previously deposited with the NASD by the Claimants. Claimants, William J. Ragusin and Rita F. Childers are hereby jointly and severally liable for and shall pay to the NASD the sum of \$4,500.00 in additional forum fees. Respondent, PaineWebber, Inc. is liable for and shall pay to the NASD the \$350.00 member surcharge assessed in accordance with Section 45 of the Code.

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

Arbitrators' Signatures:

Dated:

Dennis S. Boxeur, Esq.
Dennis S. Boxeur, Esq.
Public Arbitrator, Presiding Chair

May 16, 1996

John E. Ulrey
John E. Ulrey
Public Arbitrator

May 16, 1996

Craig H. Stanley
Craig H. Stanley
Industry Arbitrator

May 16, 1996

Date served by the NASD: May 17, 1996