

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Spero and Meryl Michos

95-01577

Name of Respondents

PaineWebber, Inc.
Lawrence Katz

REPRESENTATION

For Claimant Spero and Meryl Michos ("Claimants"): Fredric D. Firestone of the law firm of Hadley, House & Rabin, P.C.

For Respondents PaineWebber, Inc. ("PaineWebber") and Lawrence Katz ("Katz"): James K. Archibald, Esq. and David C. Mancini, Esq. of the law firm of Venable, Baetjer and Howard, LLP

CASE INFORMATION

Statement of Claim filed: March 23, 1995
Claimants' Submission Agreements signed on: March 20, 1995

Joint Statement of Answer filed by Respondents PaineWebber and Katz (jointly referred to as "Respondents") on: June 8, 1995
PaineWebber's Submission Agreement signed Stephanie Morse-Shamosh, First Vice President PaineWebber, Inc. on: June 7, 1995
Katz's Submission Agreement signed on: May 15, 1995

HEARING INFORMATION

Hearing Dates/Sessions: February 1, 1996 - two sessions; February 2, 1996 - two sessions; and February 19, 1996 - three sessions

Hearing Location: ANA Hotel, Washington, D.C.

CASE SUMMARY

Claimants alleged, in their Statement of Claim, that in October 1992 they met Katz, an investment broker, with PaineWebber's Bethesda, MD, office to discuss their desire for a low risk conservative investment. Claimants alleged that unbeknownst to them, they had not made a conservative investment, but had purchased a complex, highly volatile, proprietary, Collateralized Mortgage Obligations (CMOs) which were totally inappropriate for them given their conservative investment goals. Claimants alleged that Katz never explained the nature and the risk of the CMOs including, among other things, the fluctuations of the interest rates, early payouts of portions of principal, PaineWebber's proprietary products and a secondary market which could be significantly lower than the real market for the bonds. Claimants alleged that from October 1992 to August 1993, the bonds seemed to perform relatively well and based upon this apparent performance and Katz's enthusiastic recommendation, Claimants made an additional bond purchase through PaineWebber in September 1993. Claimants alleged that by November 1993, the bond market started to fall and the monthly statements provided by PaineWebber and Katz failed to reflect the adverse changes in the bonds. Claimants alleged that in December 1993, they received account statements from Katz and PaineWebber which stated that the price for the FNMA Pool CL93176D bonds was unavailable. Claimants alleged that in January 1994, Mrs. Michos met with Katz concerning the performance of their investment portfolio and was advised not to make rush decisions regarding the daily fluctuations in the value of the bond prices but to rely upon and make decisions based on the monthly account statements. Claimants alleged that in early April 1994, Mrs. Michos contacted Ms. Curtis of PaineWebber's Bethesda office seeking the most recent price for the bonds but was told the price was unavailable at that time. Claimants alleged that several days later Ms. Curtis provided the Claimants with a price quote for their bonds which indicated a loss of almost \$10,000.00 from the principal amount invested. Claimants alleged that as a result of Katz and PaineWebber's failure to provide proper investment advice, the Claimants transferred the majority of their account including the bonds in question to another brokerage firm. Claimants alleged that from April through October 1994, Claimants held on to the bonds while they attempted to resolve this claim with PaineWebber without resorting to arbitration or litigation. Claimants alleged that after two other brokerage firms attempted to get price quotes for the bonds, Claimants learned that the bonds were PaineWebber's proprietary products and the bonds could only be sold at or near market prices by PaineWebber. Claimants alleged that in October 1994, Claimants decided to utilize PaineWebber to sell their bonds and cut their losses.

Respondents denied in their Answer all allegations of wrongdoing raised by Claimants' Statement of Claim. Respondents maintained that Claimants are relatively sophisticated investors having at least thirteen years of previous experience in stock and bond investments. Respondents maintained that the \$20,000.00 in losses resulted from the failure of Claimants to follow the advice of Katz and their failure to adhere to the original investment plan for CMOs which was to buy them and hold them until they were redeemed. Respondents maintained that the bonds in question were only a part of a varied portfolio which included ten different securities, five of which were rated AAA or contained significant amounts of AAA rated securities. Respondents maintained that Claimants' investment goals as presented to Katz in October 1992 were: (1) avoid loss of principal due to the credit quality of an investment; (2) achieve a higher rate of return than the bank was offering Claimants; (3) liquidity was not a concern as Claimants had no specific plans for the funds; and (4) Claimants already had their funds in conservative investments which were causing them to lose their buying power. Respondents maintained that the purchases were entirely appropriate in light of Claimants' stated investment goals. Respondents maintained that the bonds were fully explained to Claimants including the relationship between the securities and interest rates and early redemption. Respondents maintained that Katz repeatedly advised Claimants that discrepancies could occur in bond pricing since the pricing of them is not calculated from actual transactions. Respondents maintained that the efforts of other representatives obtaining information on the bonds is misleading since the bonds were listed in the Bloomberg system where extensive information about them was available. Respondents maintained that the bonds were not proprietary to PaineWebber and could be sold by any brokerage firm. Respondents maintained that Claimants' decision to sell was made in conjunction with advice they received from their attorney, advice which was contrary to the advice they had received from Katz. Respondents maintained that the advice from Claimants' attorney was misplaced and when carried out caused Claimants to sell at the very bottom of the market.

RELIEF REQUESTED

1. FNMA Pool CL91110G

Purchased October 29, 1992	
Price \$44.25	
Quantity 50,000	\$22,128.80
Sold October 21, 1994	
Price \$19.	<u>9,496.20</u>
Loss	<u>(\$12,632.60)</u>

2. FNMA Pool CL93176D

Purchased September 23, 1993

Price \$60.25

Quantity 30,000

\$18,078.00

Sold October 21, 1994

10,496.20

Price \$35.

(\$7,581.80)

3. Total Loss

(\$20,214.40)

Claimants also request attorney's fees and punitive damages.

Respondents requested that the Panel rendered an award in their favor with costs assessed against Claimants.

OTHER ISSUES CONSIDERED & 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. That Respondents PaineWebber and Katz are jointly and severally liable to Claimants Spero and Meryl Michos and shall pay to Claimants the sum of \$15,000; no prejudgement interest is awarded on this amount.
2. That Claimants' claim for punitive damages is denied in its entirety.
3. All costs, including attorneys' fees except as forum fees are specifically addressed below are denied in their entirety.
4. Any and all claims not specifically addressed are denied in their entirety.

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FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

7 hearing sessions X \$500 = \$3,500

Forum Fees Assessed Against: three hearing sessions are assessed against Claimant, however, Claimants are entitled to offset this amount with their hearing session fee of \$500 previously deposited so that the forum fee due from Claimants is \$1,000.

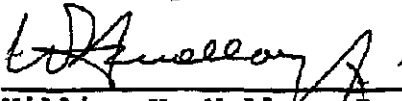
Respondents PaineWebber and Katz are jointly and severally assessed forum fees in the amount of \$2,000.

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

DATE

APR 13, 1996

Concurring Arbitrators' Signatures



William H. Malloy, Jr., Chairperson
Public Arbitrator

Albert D. Sturtevant, Panelist
Public Arbitrator

C. Gregory Ellison, Panelist
Industry Arbitrator

Date Award Served by the NASD: April 4, 1996

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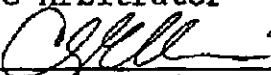
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