

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimants

Lloyd H. Thomas
Miriam Stumpf Thomas

and

Case Number: 95-01681

Name of Respondent

Paine Webber, Inc.

REPRESENTATION OF PARTIES

Claimants Lloyd H. Thomas and Miriam Stumpf Thomas ("Claimants") were represented by James E. Stovall, Esq. of Metairie, Louisiana.

Respondent Paine Webber, Inc. ("Respondent") was represented by Earl S. Eichin, Jr., Esq. of O'Neil, Eichin, Miller, Breckinridge & Saporito located in New Orleans, Louisiana.

CASE INFORMATION

The Statement of Claim was filed on or about April 4, 1995. Claimants' Joint Submission Agreement was signed on March 22, 1995.

The Statement of Answer was filed on or about June 6, 1995. Respondent's Submission Agreement was signed on April 27, 1995 by Stephanie Morse-Shamosh, Esq. First Vice President of Paine Webber, Inc.

HEARING INFORMATION

The telephonic pre-hearing conference was held on:

August 13, 1996 for one (1) session.

The Hearing was held on:

June 10, 1996 for two (2) sessions;

June 11, 1996 for two (2) sessions;
August 15, 1996 for two (2) sessions; and
August 16, 1996 for three (3) sessions.

The Hearing location was New Orleans, Louisiana.

CASE SUMMARY

Claimants alleged that they maintained several accounts with Respondent and placed almost all their liquid assets therein. Claimants contended that they desired investments with the safety and stability commensurate with the management of retirement funds and with funds used for retirement, and that Respondent, through its agents promised to do so. Claimants asserted that Respondent commenced its pattern of trading in these risky investments which involved repeatedly: purchasing speculations, holding these risky issues for a short period of time, and then selling them only to re-purchase speculations again. In addition, Claimants maintained that Respondent engaged in certain forms of option and apparent margin trading, none of which was, or is, understood by Claimants.

Respondent denied all liability to Claimants in its Statement of Answer. Respondent alleged that the Claimants chosen investment strategy consisted of purchasing positions in equity securities and writing covered calls on those positions to generate additional income. Respondent contended that because none of the securities in question were purchased while their accounts were at Paine Webber, losses resulting from their ultimate disposition were not Respondent's responsibility. Respondent asserted that all transactions entered were with Claimants' specific authority and approval, and that Claimants were knowledgeable and experienced.

RELIEF REQUESTED

Claimant requested damages in the amount of \$300,000, plus punitive damages, reasonable attorney's fees, plus all filing fees and all other costs of these proceedings.

Respondent requested that the Statement of Claim be dismissed in its entirety with prejudice.

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 original(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

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) Respondent Paine Webber, Inc. is liable for, and shall pay to Claimants Lloyd H. Thomas and Miriam Stumpf Thomas compensatory damages in the amount of Fifty Eight Thousand Two Hundred and Seventy Three Dollars and No Cents (\$58,273.00) within Thirty (30) days of receipt of this Award;
- (2) Respondent Paine Webber, Inc. is liable for, and shall pay to Claimants Lloyd H. Thomas and Miriam Stumpf Thomas interest at the rate of Five Percent (5%) which shall begin to accrue on April 4, 1995, and shall continue to accrue until the date this Award is paid in full;
- (3) Respondent Paine Webber, Inc. is liable for, and shall pay to Claimants Lloyd H. Thomas and Miriam Stumpf Thomas their attorney fees and costs in the amount of Twenty Four Thousand and Three Hundred Dollars and No Cents (\$24,300.00) within Thirty (30) days of receipt of this Award;
- (4) Respondent Paine Webber, Inc. shall reimburse Claimants Lloyd H. Thomas and Miriam Stumpf Thomas for the hearing session deposit in the amount of Seven Hundred and Fifty Dollars and No Cents (750.00); and
- (5) Any relief not specifically enumerated is hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 per pre-hearing session, if any. There was one (1) pre-hearing session x \$300 = \$300 in forum fees. There were Nine (9) hearing sessions x \$750 = \$6,750. Total forum fees = \$7,050. Pursuant to §10332 (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 §10332 (c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$200 and shall retain as forum fees the hearing session deposit in the amount of \$750 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimants.

Pursuant to §10332 (c) of the Code Respondent Paine Webber, Inc. is liable for, and shall pay forum fees in the amount of \$6,300. Pursuant to §10333 (a) of the Code, Respondent Paine Webber, Inc. is liable for, and shall pay the Member Surcharge in the amount of \$350.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Concurring Arbitrators' Signatures

\s\ Walton L. Huff
Walton L. Huff
Panelist
Public Arbitrator

October 11, 1996
Dated:

\s\ Robert J. Eitel
Robert J. Eitel
Panelist
Industry Arbitrator

October 14, 1996
Dated:

Dissenting Arbitrator's Signature

I am unable to join my fellow panelists in the above Award. Accordingly, the Award is not unanimous. Although reached through reflective and thoughtful deliberation following the conclusion of the second set of hearing sessions in this matter, I do not concur in the findings.

Being unable to sway my fellow panelists during our deliberations, I agreed to reflect on the Award before stating my conclusions. After reviewing the tapes, documentary evidence, and expert reports at length, I find that I must in good conscience dissent from the Award of Attorney's Fees and Compensatory Damages as being unsupported by the evidence. I do, however, concur with my colleagues in asking Respondent to pay forum fees and reimburse Claimants for any and all prepaid forum fees or deposits in this matter. I further agree that no disciplinary referral is appropriate in this case.

\s\ William D. Hawkland
William D. Hawkland, Jr., Esq.
Chairperson
Public Arbitrator

October 11, 1996
Dated:

For NASD use only:

Date award served on the parties: October 24, 1996