

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Kenneth C. and Julia A. Jones

95-02183

Name of Respondents

PaineWebber, Inc.
Mark Scaglione
Patrick Shea
Robert A. Rosso

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on May 5, 1995, Claimants Kenneth C. & Julia A. Jones, who appeared Pro Se, alleged that Respondents PaineWebber, Inc. ("PWI"), Mark Scaglione ("Scaglione"), Patrick Shea ("Shea"), and Robert A. Rosso ("Rosso"), failed to provide accounting services as required by the PaineWebber Access Account Agreement by failing to request the cost basis for a group of approximately fifty trades at the time their account was transferred from their previous broker Dean Witter to PWI on September 28, 1993. Claimants further alleged that Respondents also failed to provide the relevant cost basis data when it was requested by Claimants on or about March 29, 1995. Claimants contended that Respondents' failure to provide relevant cost basis data needlessly jeopardizes Claimant by increasing the likelihood that if audited, the IRS will not accept the data Claimants have been forced to determine without the Respondents' assistance. Claimants further contended that as a result of the Respondent's wrongdoing, they have suffered a loss for which the Respondents should be held liable.

Respondents PaineWebber, Inc., Mark Scaglione, Patrick Shea, and Robert A. Rosso, in a joint Statement of Answer, through their in-house counsel, Evan Charkes, Esq., maintained that provision of disputed cost basis data is an accounting function, which PWI does not perform and never promised to perform for Claimants pursuant to terms set forth in PaineWebber Access Program Agreement and PaineWebber Incorporated Investment Advisory Services brochure, which states that if a customer needs personal advice, arrangements can be made between themselves and the firm Ernst & Young. Respondents further maintained that all necessary information for tax preparation was furnished to Claimants in the 1994 Year End Summary for their PaineWebber account TM-23794. Respondents contended that if Claimants required additional data, the appropriate party to contact is Avatar Associates, the account manager for their previous Dean Witter and current PaineWebber accounts. Respondents further contended that as a result of the above, they should not be held liable in this matter.

RELIEF REQUESTED

Claimants Kenneth C. & Julia A. Jones, requested \$937.50 in actual damages, and that PaineWebber Inc. review the cost basis and capital gains information they have generated and independently determine same for all transactions which occurred in 1994 and 1995.

Respondents PaineWebber, Inc., Mark Scaglione, Patrick Shea, and Robert A. Rosso, requested that the claims of the Claimant be dismissed in their entirety, and that they be awarded legal fees.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Sheldon L. Barat, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants Kenneth C. & Julia A. Jones, on May 2, 1995, and by the Respondents Mark Scaglione and Robert A. Rosso, on September 14, 1995, and by Respondent Patrick Shea, on September 15, 1995, and by Respondent PaineWebber, Inc., on September 20, 1995.

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., Mark Scaglione, Patrick Shea, and Robert A. Rosso, are jointly and severally liable, and shall pay to the Claimants Kenneth C. and Julia A. Jones, \$400.00 in actual damages.
2. The parties shall bear their respective costs and attorney's fees.
3. All other relief requests are hereby denied.
4. The \$30.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Kenneth C. & Julia A. Jones, shall be retained by the NASD, Inc. The Respondents PaineWebber, Inc., Mark Scaglione, Patrick Shea, and Robert A. Rosso, are jointly and severally liable, and shall pay to the Claimants Kenneth C. and Julia A. Jones, \$30.00 as reimbursement of the filing fee.

AFFIRMATION

STATE OF

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ss:

COUNTY OF

I, SHeldon L. BARAT, 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.

Sheldon L. Barat
Signature of Arbitrator

DATE OF DECISION: March 20, 1996