

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

PaineWebber, Inc.

95-03344

Name of Respondents

Tibor J. & Gerda Somers

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Securities Dealers, Inc.

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REPRESENTATION

Claimant PaineWebber, Inc. ("Claimant") was represented by James P. Flynn, Harnoch Weisman, Roseland, NJ.

Respondents Tibor J. Somers (aka Ted J. Somers) and Gerda Somers ("Respondents") appeared *pro se*.

CASE INFORMATION

The Statement of Claim was filed July 12, 1995.

Claimant's Uniform Submission Agreement was signed July 11, 1995.

Respondents' Statement of Answer was filed August 31, 1995.

Respondents' Uniform Submission Agreement was filed August 16, 1995.

HEARING INFORMATION

Hearing Date/Sessions: June 11, 1996/two sessions

Hearing Location: Vincent Varallo Associates, Inc.
Philadelphia, PA

CASE SUMMARY

Claimant alleged that Respondents had three accounts with Claimant, one of which was an IRA account of Respondent Tibor J. Somers' ("Mr. Somers"). Claimant alleged that an outside bank, First Western, erroneously wire-transferred \$44,712.69 into a retirement account held by Mr. Somers on March 7, 1994. Claimant alleged that these funds were to have been deposited in the account of another of Claimant's customers. Claimant alleged that in December 1994 Claimant was able to trace the misdirected funds to Mr. Somers' I.R.A. account. However, Claimant alleged that Mr. Somers had transferred the funds in the IRA account to National Financial Services with the exception of \$8.66. Claimant alleged that Respondent Gerda Somers ("Mrs. Somers") transferred her account also, leaving only one joint account with a balance of \$7,500.00. Claimant alleged that Respondents wrongfully and knowingly detained the funds and refused to return the funds. Claimant alleged that when contact was finally made with Respondents, Mr. Somers admitted that he knew the funds did not belong to

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Respondents but that it was Claimant's loss. Claimant alleged that Respondents wrongfully converted to their own use and enrichment, funds in the amount of \$44,712.69.

Respondents denied all allegations raised in the Statement of Claim. Respondents maintained that Respondents were not aware of any allegations of stealing money until March 1994 when Claimant filed a Writ of Attachment on Respondents' home and accounts. Respondents maintained that Claimant never requested a return of any funds put into Respondents' account through an error of First Western Bank. Respondents maintained that alleged affirmative defenses of failure to properly supervise and manage Respondents' accounts, failure to invest in Respondents' best interests, unauthorized trading in margin and violation of Claimant's own regulations as well as the rules of various regulatory entities. Respondents maintained that Claimant's own slow actions compounded any error. Respondents further maintained that the money placed into Mr. Somers' account was not due to a mistaken entry but to correct mistakes in erroneously debiting Respondents' accounts. Respondents maintained that Respondents never admitted in the telephone call of January 4, 1995 that the transferred funds did not belong to Mr. Somers because, at that time, Respondents did not know what Claimant was talking about. Respondents maintained that Claimant had control of Respondents' accounts during the time in question. Respondents maintained that any losses suffered by Claimant were the result of Claimant's own actions and Respondents are not liable.

RELIEF REQUESTED

Claimant requested damages in the amount of \$44,704.00 plus interest from March 7, 1994 until paid; injunctive relief restraining transfer of any funds from Respondents' accounts; imposition of a constructive trust for the funds in Respondents' accounts; a writ of attachment on funds in Respondents' accounts; punitive damages; and the costs of this arbitration including attorneys' fees. At the hearing Claimant withdrew the requests for injunctive relief restraining transfer of any funds from Respondents' accounts, imposition of a constructive trust for the funds in Respondents' accounts, and the writ of attachment on funds in Respondents' accounts.

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

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.

9/10/96

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondent Tibor J Somers (aka Ted J. Somers) is liable to and shall pay to PaineWebber, Inc. the sum of \$41,549.73, as well as simple interest at the rate of 6% per annum thereon from January 4, 1995 to June 11, 1996 in the amount of \$3,580.24.
2. That the claims against Gerda Somers are dismissed in their entirety.
3. That the request for punitive damages is denied.
4. That each party shall bear its own costs and expenses, including attorney's fees.
5. That any relief not specifically addressed herein is denied.

FORUM FEES

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

2 sessions x \$600.00 = \$1,200.00

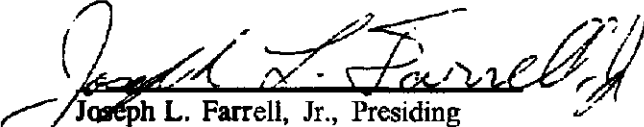
Forum Fees are assessed against Tibor J. Somers (aka Ted J. Somers). Respondent Tibor J. Somers is liable to and shall reimburse Claimant for the \$600.00 hearing session deposit previously submitted to the NASDR. Respondent Tibor J. Somers has a net assessment due to the NASDR is \$600.00.

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

DATE

7/5/96

CONCURRING ARBITRATORS' SIGNATURES


Joseph L. Farrell, Jr., Presiding
Public Arbitrator

Diane Ciccone
Public Arbitrator

Frank T. Salera
Industry Arbitrator

Date Decision Served by NASD:

July 10, 1996

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CONCURRING ARBITRATORS' SIGNATURES

Joseph L. Farrell, Jr., Presiding
Public Arbitrator

7/7/96

Diane Ciccone
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Public Arbitrator

Frank T. Salera
Industry Arbitrator

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CONCURRING ARBITRATORS' SIGNATURES

Joseph L. Farrell, Jr., Presiding
Public Arbitrator

Diane Ciccone
Public Arbitrator

July 5, 1996

Frank T. Salera
Industry Arbitrator

Date Decision Served by NASD:

July 10, 1996