

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Paul L. Feinberg
Paul L. Feinberg KEOGH Profit Sharing Plan

95-03684

Name of Respondents

Whale Securities Co., Inc.
Gregory Traina

REPRESENTATION

For claimants Paul L. Feinberg ("Feinberg") and Paul L. Feinberg Keogh Profit Sharing Plan (collectively referred to as "claimants") appeared Martin E. Karlinsky, Esq. of Camhy Karlinsky & Stein LLP located in New York, New York.

For respondents Whale Securities Co., Inc. ("Whale") and Gregory Traina ("Traina") (collectively referred to as "respondents") appeared David S. Richan, Esq. of Tenzer Greenblatt LLP located in New York, New York.

CASE INFORMATION

Statement of Claim was filed July 28, 1995. First Amended and Supplemental Statement of Claim was filed on May 20, 1996. Paul L. Feinberg's Submission Agreement was signed on July 24, 1995. Paul L. Feinberg Keogh Profit Sharing Plan's Submission Agreement was signed on August 9, 1995.

Joint Statement of Answer was filed by Whale and Traina on October 11, 1995. Whale's Submission Agreement was signed on October 13, 1995. Traina's Submission Agreement was signed on October 13, 1995.

HEARING INFORMATION

Pre-Hearing Conference:	April 16, 1996	-	One Arbitrator
	July 24, 1996	-	One Arbitrator
Hearing Dates/Sessions:	June 25, 1996	-	Two Sessions

June 26, 1996	-	Two Sessions
July 29, 1996	-	Two Sessions
August 15, 1996	-	Two Sessions
September 24, 1996	-	Two Sessions

The hearings were held at the offices of the National Association of Securities Dealers, Inc. located in New York, New York.

CASE SUMMARY

Claimants alleged that, in or about the spring of 1993, Feinberg was introduced to Traina and that, during conversations over the subsequent months, Traina told Feinberg that he would be able to manage Feinberg's retirement account and secure a 10% per month return. Claimant also alleged that Feinberg told Traina that his investment goals were preservation of principal, low risk, long-term growth and the development of a sound retirement portfolio and that he wished to make only conservative and safe investments consistent with his investment goals. Claimants asserted that Traina represented that he would follow Feinberg's investment goals and invest in safe, non-speculative securities. Claimants further asserted that Feinberg was not asked to complete any new account forms or account opening documents and that the documentation prepared by respondents did not reflect Feinberg's goals and limitations.

Claimants alleged that Traina made numerous recommendations as to purchases in the retirement account and that virtually all of these securities were unsuitable for retirement accounts and resulted in a total realized loss of \$84,079.41. Claimants further alleged that among the unsuitable investments recommended by Traina was an initial public offering for Water Point Systems, Inc. ("Water Point"). Claimants asserted that Traina advised Feinberg that Whale stood behind any investment in Water Point and that Feinberg would not suffer any loss. Claimants asserted that, based on Traina's recommendations, representations and assurances, Feinberg purchased 3,000 shares of Water Point on December 21, 1993 at the initial offering price of \$5.00 per share and an additional 8,500 shares during the period of January 14, 1994 through April 13, 1994 at prices ranging from \$5.25 per share to \$5.6875 per share.

Claimants contended that by January 18, 1995 the price of Water Point had dropped to 12.5 cents per share and that, as a result of the Water Point investment, claimants lost the sum of \$52,933.75. Claimants also contended that, as the price of Water Point began to decline, Traina pleaded with Feinberg to hold the Water Point investment and that Feinberg relied on Traina's representations and assurances in connection with purchasing, selling and retaining the Water Point stock. Claimants asserted that Traina's representations and assurances concerning Water Point were false and misleading and that Traina failed to disclose material facts to Feinberg. Claimants further asserted that on numerous occasions Traina told Feinberg that respondents would make up for the losses suffered by offering "special opportunities", which, according to claimants, were extremely high-risk initial public offerings underwritten by Whale.

Respondents denied any wrongdoing regarding claimants' Whale accounts and maintained that all transactions in the account were carried out in conformity with all applicable laws, regulations, rules, practices and agreements between Whale and claimants.

Respondents maintained that Feinberg represented to Whale that his annual income was in excess of \$100,000.00 per year and that his approximate net worth was \$500,000.00, \$250,000.00 of which was liquid. Respondents further maintained that claimants reported their investment objectives to be "appreciation/risk" and "speculative". Furthermore, respondents denied that Traina ever guaranteed any returns or profits on the trading in claimants' individual or Keogh accounts or that Traina ever misrepresented any material facts regarding Water Point.

As affirmative defenses, respondents maintained that claimants were estopped from obtaining recovery because they had or should have had full knowledge of all material facts concerning their securities; that claimants authorized and directed the execution of all transactions in their account; that the alleged representations made by Traina regarding potential values of securities were not statements of material fact upon which claimants could reasonably have relied; that the Statement of Claim failed to state causes of action upon which relief can be granted; that claimants waived their claims by failing to take timely and appropriate action prior to incurring damage; that respondents acted in good faith and exercised at least that degree of care, diligence and skill which ordinary prudent persons would exercise in similar circumstances and like positions; that the claims were barred by the applicable statute of limitations; and that punitive damages and attorneys' fees may not be awarded as a matter of law.

RELIEF REQUESTED

Claimants requested an award of:

1. compensatory damages in the amount of \$130,155.35;
2. punitive damages in the amount of \$100,000, or in such other or further amount as the panel may deem appropriate to punish or deter respondents for their condemnable conduct;
3. attorneys' fees of \$25,000.00, in order to fully compensate claimants for the amounts they have been obliged to incur by reason of respondents' wrongdoing.

Claimants further requested that all hearing and forum costs be assessed against respondent Whale.

Respondents 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.

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. Respondent Whale Securities be and hereby is liable and shall pay claimants compensatory damages in the amount of \$12,500.00.
2. All claims against respondent Traina are dismissed in their entirety.
3. Claimants' request for punitive damages is hereby denied.
4. Each party shall bear their own costs, including attorneys' fees, except that respondent Whale is liable and shall pay claimants the sum of \$1,000.00 to reimburse claimants for the hearing session deposit paid to the NASD.
5. All other claims are denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$250.00 filing fee previously paid by claimants and have assessed the following forum fees:

2 pre-hearing conferences x \$300.00	= \$ 600.00
10 hearing sessions x \$1,000.00	= <u>\$10,000.00</u>
Total	= \$10,600.00

Respondent Whale be and hereby is liable for the sum of \$10,600.00, representing the total amount of forum fees assessed in this matter. Claimant previously deposited \$1,000.00 with the NASD and, therefore, Whale shall pay the sum of \$9,600.00 to the NASD, representing the amount of fees outstanding.

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

Concurring Arbitrators' Signatures

/s/ _____
Lawrence A. Pittore, Esq.
Chairperson-Public Arbitrator

Alan R. Sloate, Esq.
Public Arbitrator

Clifford J. Friedman
Industry Arbitrator

Date of decision: January 16, 1997

I, Lawrence A. Pittore, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

/s/ _____
Lawrence A. Pittore, Esq.

Concurring Arbitrators' Signatures

Lawrence A. Pittore, Esq.
Chairperson-Public Arbitrator

/s/ _____
Alan R. Sloate, Esq.
Public Arbitrator

Clifford J. Friedman
Industry Arbitrator

Date of decision: January 16, 1997

I, Alan R. Sloate, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

/s/ _____
Alan R. Sloate, Esq.

Concurring Arbitrators' Signatures

Lawrence A. Pittore, Esq.
Chairperson-Public Arbitrator

Alan R. Sloate, Esq.
Public Arbitrator

/s/_____
Clifford J. Friedman
Industry Arbitrator

Date of decision: January 16, 1997

I, **Clifford J. Friedman**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

/s/_____
Clifford J. Friedman