

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Lucy Becker

and

95-03773

Names of Respondents

PaineWebber, Incorporated
and Philip Evans

REPRESENTATION OF PARTIES

Lucy Becker ("Claimant") was represented by Michael D. Napoli, Esq. of Clements, O'Neill, Pierce & Nickens located in Houston, TX.

PaineWebber, Inc. and Philip Evans ("Respondent") were represented by Andrew R. Harvin, Esq. of Doyle, Rider, Restrepo, Harvin & Robbins, L.L.P. located in Houston, TX.

CASE INFORMATION

The Statement of Claim was filed on or about August 3, 1995.

The Submission Agreement of Claimant, Lucy Becker was signed on July 31, 1995.

The Joint Statement of Answer of Respondents, PaineWebber, Inc. and Philip Evans was filed on or about September 18, 1995.

The Submission Agreement of Respondent, PaineWebber, Inc. was signed on September 18, 1995 by Fredrick McGinnis, Branch Manager.

The Submission Agreement of Respondent, Philip Evans was signed on September 18, 1995.

HEARING INFORMATION

The hearing was held in Houston, TX on the following dates:

-April 23, 1996 for two (2) sessions

-April 24, 1996 for one (1) session

CASE SUMMARY

- In the Statement of Claim, Lucy Becker ("Becker") made allegations against PaineWebber, Inc. ("PaineWebber"), Philip Evans ("Evans") and Marvin Norman, III ("Norman") including breach of fiduciary duty, unsuitable investment advice, violations of the Texas Securities Act, violations of the Texas Deceptive Trade Practices Act ("DTPA"), common law fraud, negligence and gross negligence. As alleged, Becker and her husband transferred an account worth approximately \$300,000.00 in August, 1992 to PaineWebber which they had opened through Norman at another broker dealer in 1991. Becker allegedly asked Norman in July, 1993 to prepare an investment plan to produce \$1,400.00 in monthly income without risk to the principal since the Claimant would retire at the end of 1993 and because her husband was critically ill. Claimant alleged that Norman, as part of the plan he prepared, recommended that the Beckers sell some of their stock and invest approximately \$150,000.00 in a Freddie Mac Agency Bond. According to the Claimant, Norman represented that the bond would pay a fixed 7% per year or \$875.00 per month. Claimant alleged that rather than purchasing the bond described to her, the Respondents purchased on or about August 17, 1993 for a total of \$153,326.78 a FNMA 1993-56 PZ, a Z-bond which was a mortgage-backed derivative that does not pay interest until all previous tranches in its pool were paid. As alleged, although the Respondents were aware that the bond was not paying interest, they did not notify the Claimant and they continued to forward \$1,400.00 per month to the Claimant. After noticing in March of 1994 that the value of the bond had dropped considerably, Becker contacted Evans who told her the bond purchased did not pay interest yet accrued interest which would be paid upon maturity in thirty years. Evans allegedly suggested that Becker either sell off portions of the bond and use the proceeds to live on or withdraw money from her Strategic Income Fund. Claimant alleged that Evans told her that the value of the bond was not as listed on the account statement yet the true value was the par value and that she could sell the bond at any time and receive the par value. Becker held the bond until approximately June of 1994 when she sold it for a total of \$109,471.81.

- In their Answer, PaineWebber, Inc., Philip Evans and Marvin Norman, III denied the allegations of wrongdoing set forth in the Statement of Claim. Respondents specifically stated Claimant did not inform Evans that she wanted an investment vehicle to produce income without risking the principal and that her investment objectives were investment grade, income, growth and speculation. During a discussion between the parties in June of 1994, Respondents allegedly made several recommendations to Claimant yet did not advise Claimant to sell the bond due to the overall decline in the bond market. The Respondents maintained that any loss in the account was due to unforeseen market fluctuations and was within the risk that Becker voluntarily assumed. The Respondents asserted many affirmative defenses including, but not limited to, failure to state claims for breach of fiduciary duty at common law and under the DTPA for which relief may be granted, losses suffered were caused by intervening and superseding market events, waiver, estoppel and ratification.

RELIEF REQUESTED

Claimant requested an award in the amount of \$57,854.97 in actual damages plus damages for tax liability, attorneys' fees, pre-judgement and post-judgement interest and costs of arbitration.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded costs.

OTHER ISSUES CONSIDERED & DECIDED

Claimant, Lucy Becker named Marvin Norman, III as a Respondent in the Statement of Claim yet voluntarily dismissed him as a Respondent without prejudice by letter dated September 12, 1995.

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains 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. Respondent, PaineWebber, Inc. is hereby liable for and shall pay to the Claimant, Lucy Becker the sum of \$57,854.00 in actual damages;
2. Respondent, PaineWebber, Inc. is hereby liable for and shall pay to the Claimant, Lucy Becker the amount of \$23,140.00 for attorneys' fees. In deciding to award attorneys' fees, the arbitrators considered the evidence and the testimony as well as the Texas Deceptive Trade Practices Act which was the legal authority provided by the Claimant in the Statement of Claim;
3. Respondent, PaineWebber, Inc. is hereby liable for and shall pay to the Claimant, Lucy Becker the sum of \$2,000.00 for expert witness fees;
4. All relief not specifically granted herein is hereby denied;
5. The parties shall bear their respective costs including attorneys' fees except for those specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$500.00 per hearing session. There were three (3) sessions x \$500.00 = \$1,500.00 in forum fees. Pursuant to Section 43(b) of the 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 Section 43(c) of the Code, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$150.00 and shall retain as forum fees the hearing session deposit in the amount of \$500.00 previously deposited with the NASD by the Claimant, Lucy Becker. Respondent, PaineWebber, Inc. is liable for and shall pay to the Claimant, Lucy Becker the amount of \$650.00 as reimbursement. Respondent, PaineWebber, Inc. is liable for and shall pay to the NASD the sum of \$1,000.00 in additional forum fees. Respondent, PaineWebber, Inc. is also liable for and shall pay to the NASD the \$300.00 member surcharge assessed in accordance with Section 45 of the Code.

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

Concurring Arbitrators' Signatures:

Dated:

Richard A. Hollenberg
Richard A. Hollenberg
Public Arbitrator, Presiding Chair

May 16, 1996

Leonard S. Alpert
Leonard S. Alpert
Public Arbitrator

May 13, 1996

Christine E. Monical, Esq.
Christine E. Monical, Esq.
Industry Arbitrator

May 10, 1996

Date served by the NASD: May 17, 1996