

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION

In the Matter of the Arbitration Between

Name of Claimant

Paul M. Cryder

9/96 9609167  
© National Association of  
Securities Dealers

95-04683

1996

All Rights Reserved

Name of Resuondents

PaineWebber , Inc.

Brian Miller

REPRESENTATION

Claimant Paul M. Cryder ("Cryder") was represented by Daniel R. Tobin, Esq., Tobin & Tobin, Pittsburgh, PA.

Respondents Brian Miller ("Miller") and PaineWebber, Inc. ("PaineWebber") were represented by Lisa Catalano Tillem, Esq., PaineWebber, Inc., Weehawken, NJ.

CASE INFORMATION

The Statement of Claim was filed October 3, 1995.

Claimant's Uniform Submission Agreement was signed September 25, 1995.

Respondents' Joint Statement of Answer was filed November 27, 1995.

Respondents' Joint Amended Statement of Answer was filed August 28, 1996.

Miller's Uniform Submission Agreement was signed November 1, 1995.

PaineWebber's Uniform Submission Agreement was signed November 27, 1995.

HEARING INFORMATION

Hearing Date/Sessions: September 5, 1996/two sessions

Hearing Location: Westin William Penn Hotel  
Pittsburgh, PA

CASE SUMMARY

Claimant alleged that Respondents induced Claimant to authorize the purchase of unsuitable securities. Claimant alleged that such inducement was made through a series of misrepresentations and omissions of material fact upon which Claimant reasonably relied. Claimant alleged that Respondents had been informed that Claimant's investment objectives were, in order of priority, income producing, investment grade investments only, growth, and lastly, speculation. Claimant alleged that Respondents were informed that at all times the corporate bond portion of Claimant's account was only to be invested in

safe, investment grade, income producing corporate bonds with limited risk of loss of the investment. Claimant alleged that in July 1993, Miller induced Claimant to authorize \$120,000.00 face value bonds of Grand Union Capital Senior Notes ("GUCSN") at the market price of \$57,600.00. Claimant alleged that prior to the purchase of GUCSN, Respondents did not provide any written prospectus regarding GUCSN or any other written material regarding the securities. Claimant alleged that Miller misrepresented that GUCSN were quality investments in keeping with Claimant's stated objectives. Claimant alleged that GUCSN was, in fact, highly speculative investments which has subsequently lost most of their value. Claimant alleged that Respondents violated Pennsylvania Securities Act of 1972 Sections 1-403 and 1-501 by utilizing a manipulative, deceptive and fraudulent scheme, device or contrivance by means of untrue statements and omissions of material facts. Claimant alleged that Respondents' actions also violated Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Pa. C.S.A. Section 201-1 et seq. In addition, Claimant alleged that Respondents' actions constituted common law fraudulent misrepresentation and negligent misrepresentation under Pennsylvania statute. Claimant alleged that Respondents' actions caused damages to Claimant.

Respondent denied all assertions of wrong-doing as alleged in the Statement of Claim. Respondents maintained that Claimant was fully informed of the nature of the investment in GUCSN prior to authorizing the purchase. Respondents maintained that the investment in GUCSN was suitable for Claimant based on Claimant's financial profile, as Claimant's net worth was approximately \$2 million in 1993 when the investment in GUCSN was authorized. Respondents maintained that Claimant had purchased other similar high-yield debt securities and understood the potential profit as well as the possible risk in such securities. Respondents maintained that Claimant opened an account with PaineWebber in 1985 with ten years experience in securities investments. Respondents maintained that Claimant never informed Miller that the corporate bond portion of Claimant's portfolio was to be invested solely in investment grade quality bonds. Respondents maintained that Claimant requested that his American Standard bonds, which were redeemed in July 1993, be replaced with similar new investment quality bonds. Respondents maintained that American Standard bonds were rated B- by Standard and Poor's in September 1992 and GUCSN were also rated B- in July 1993. Respondents maintained that Claimant's experience as a bank trust officer as well as his eighteen years experience trading in a variety of stocks and bonds provided Claimant with extensive information and knowledge concerning his investment in GUCSN. Respondents maintained that, contrary to Claimant's assertion, the primary investment objective for Claimant's IRA account in which GUCSN was purchased, was income according to the New Account documentation. Respondents maintained that Claimant was not persuaded by misrepresentations or omissions of material fact as Claimant had full knowledge of the risks involved in each purchase. Respondents maintained that Claimant authorized each and every transaction. Respondents maintained that any loss suffered by Claimant was the result of Claimant's own decisions and actions.

#### **RELIEF REQUESTED**

Claimant requested relief in the amount of \$57,600.00; pre-award interest; and the costs of this arbitration.

Respondents requested that the Statement of Claim be dismissed in its entirety; that Claimant be assessed all costs of this arbitration including reasonable attorney's fees.

**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.

The panel considered Claimant's Motion to Limit the evidence to Claimant's IRA account No. VP3323581 and Grant Union Capital 0/15% Senior Notes purchased on July 23, 1993 and Respondents' Response thereto, and denied the Motion.

The panel considered Claimant's Motion For Sanctions Based on Lack of Compliance with Rule 10321 against Respondents as well as Respondents' Response thereto and denied the Motion.

The panel considered Respondents' Motion To Amend the Statement of Answer as well as Claimant's Response thereto and granted the Motion.

**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. That the Statement of Claim is denied.
2. That Respondent Miller may request that all reference to this arbitration be expunged from his CRD (registration) records with the NASD Regulation.
3. That each party shall pay its own costs and expenses including attorney's fees.
4. That any relief not specifically addressed herein is denied.

**FORUM FEES**

Pursuant to Rule 10332(c) (formerly Section 43) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

2 sessions x \$500.00 = \$1,000.00

Forum Fees assessed against Claimant at fifty percent and Respondents, jointly and severally, at fifty percent. Claimant is to receive credit for the \$500.00 hearing session deposit previously submitted to the NASD Regulation, therefore having no further assessment due. Respondents, jointly and severally, have an assessment due of \$500.00.

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

9609167

DATE

CONCURRING ARBITRATORS' SIGNATURES

9/24/96

A. Ralph Ellis

A. Ralph Ellis, Presiding  
Public Arbitrator

Thomas D. Cramer  
Public Arbitrator

David A. Rodriguez  
Industry Arbitrator

Date Decision Served by NASD Regulation:

September 30, 1996

9609167

DATE

CONCURRING ARBITRATORS' SIGNATURES

\_\_\_\_\_

\_\_\_\_\_  
A. Ralph Ellis, Presiding  
Public Arbitrator

9/24/96

Thomas D. Cramer  
Thomas D. Cramer  
Public Arbitrator

\_\_\_\_\_

\_\_\_\_\_  
David A. Rodriguez  
Industry Arbitrator

Date Decision Served by NASD Regulation:

September 30, 1996

9609165

DATE

CONCURRING ARBITRATORS' SIGNATURES

\_\_\_\_\_

\_\_\_\_\_  
A. Ralph Ellis, Presiding  
Public Arbitrator

\_\_\_\_\_

\_\_\_\_\_  
Thomas D. Cramer  
Public Arbitrator

26 Sept 1996

David A. Rodriguez  
\_\_\_\_\_  
David A. Rodriguez  
Industry Arbitrator

Date Decision Served by NASD Regulation:

September 30, 1996