

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Robert B. Meyer, and
Nancy L. Meyer,
Claimants,

vs.

96-00709

PaineWebber, Inc.,
Richard Manley, and
N. Glenn Whittington,
Respondents

REPRESENTATION OF PARTIES

Robert B. Meyer, and Nancy L. Meyer ("Claimants") appeared on their own behalf.

Respondent Richard Manley ("Manley") was represented by Ben L. Krage, Esq., of Kasmir & Krage, L.L.P., Dallas, Texas.

Respondents PaineWebber, Inc. ("PWI") and N. Glenn Whittington ("Whittington") (jointly referred to as "Respondents") were represented by Lisa Catalano Tillum, Esq., of PaineWebber, Inc., Weehawken, New Jersey

CASE INFORMATION

Claimants' Statement of Claim was filed on or about February 13, 1996. Claimants' Submission Agreement was signed on February 12, 1996. Claimants' letter correcting a typographical error in the Statement of Claim was filed on or about April 24, 1996. Claimants' letter withdrawing their claim against N. Glenn Whittington was filed on or about May 24, 1996. Claimants' Amendment to their Statement of Claim was filed on or about October 17, 1996. Claimants' Response to PaineWebber's Answer to their Amended Claim was filed on or about December 19, 1996.

Respondents Statement of Answer was filed on or about April 12, 1996. PWI's Submission Agreement was signed on April 8, 1996. Respondents' Response to Amended Statement of Claim Filed on or about November 27, 1996

Manley's Statement of Answer was filed on or about April 9, 1996. Manley's Submission Agreement was signed on March 1, 1996. Manley's Answer to Claimants' Amended Statement of Claim was filed on or about November 27, 1996

HEARING INFORMATION

The hearing was held on: April 17, 1997 for two (2) sessions.

The hearing was held in St. Louis, Missouri.

CASE SUMMARY

In their Statement of Claim, and Amendment thereto, Claimants alleged that PWI through its broker/agent Manley: Intentionally deceived them into investing money with PWI, and trading on their good name, subsequently mismanaged Claimants' account to enrich themselves, without due regard for Claimants' interests, thereby causing harm to Claimants' financial well being; intentionally deceived Claimants by not informing Claimants that Manley was not licensed to deal in securities in the State of Missouri, and that Manley attempted to conceal his trading on Claimants' account immediately prior to Claimants' move, without their knowledge, in order to avoid trading for Claimants after they had established residence in the State of Missouri; failed to put through Claimants change of address at any time prior to or after their move to Missouri in an attempt to conceal the fact that Manley was dealing with Claimants in a state where he was not licensed to sell securities; with malicious intent, violated the Securities Regulations of the State of Missouri; and with intent to enrich themselves at Claimants' expense, and without due regard of Claimants interests, did, without a legitimate purpose, switch shares from one fund to another, for their own benefit, and without tangible benefits to the Claimants. The allegations arose out of transactions in the following securities: Blackrock No Amer Gvot In Tr (BNA), PW High Income Fd B (PHIAX); Var. Kampen Amer Cap Value Muni (VKV); Nuveen Quality Income Muni Fund Inc (NQU); Bristol Meyers Squibb Co.; Storage Equities; Philip Morris Co.s Inc.; Telefonos de Mexico; PW Atlas Global Growth Fd B; Quantum Chemical Corp.; and PW Utility Income Fd B

PWI denied the allegations set forth in the Statement of Claim. PWI asserted the following affirmative defenses: Claimants fail to state a claim upon which relief may be granted; Claimants at all relevant times had full knowledge of all material facts concerning their accounts with PWI, including the positions maintained and the transactions made therein; Claimants are estopped from bringing this proceeding or from obtaining full recovery therein; Claimants authorized and/or ratified all transactions in said accounts with PWI with full knowledge of all material facts thereto; Claimants' claims are barred by the applicable principles of waiver, ratification and estoppel; Claimants, with full knowledge of all material facts concerning said accounts with PWI, waived the alleged claims and injuries set forth in the Statement of claim and the alleged damages therefrom by failing to take timely and appropriate action prior to incurring such damages; PWI and its officers, agents and employees, in discharging their duties, if any, to Claimants acted in good faith and exercised the degree of care, diligence, and skill which ordinary prudent men would exercise in similar circumstances and like positions; the damages allegedly suffered by Claimants have no causal relationship with any act committed by or legally attributable to Respondents; Claimants Statement of Claim is barred in whole or in part by the applicable statute of limitations; Claimants

did not reasonable rely to their detriment on any action or inaction of Respondents or any action or inaction legally attributable to Respondents; the transactions complained of in Claimants' Statement of Claim were duly authorized by the Claimant who, at all times, were in sole control of the assets in said accounts; Claimants knew and understood the risks associated with the investments made in said account through Respondents and were willing and able to assume those risks; the nature of the transactions were suitable to said accounts' financial circumstances, background, experience and stated objectives; and Claimants had the opportunity and means to mitigate damages to said accounts but failed to do so in an appropriate and responsible manner.

Manley denied the allegations set forth in the Statement of Claim and Amendment thereto. Manley further asserted that: Claimants' claims are barred by statute of limitations; Claimants were fully informed orally and in writing concerning the four funds purchased in Claimants' accounts in March 1993; Claimant received both written confirmations and monthly statements showing all transactions; Claimants received prospectuses regarding the investments; he merely advised Claimants of their investment alternatives; after review of Manley's proposals concerning the four funds, Claimants specifically approved the investments in the amounts made; he never described the Blackrock Fund as tax exempt to the Claimants; Claimants' allegation of Manley's lack of registration for a period of time in the State of Missouri does not allege a cause of action and Claimants do not allege any resulting therefrom; based on the promise that Claimant would deliver \$80,000 on June 28, Manley ordered the trades in Telefonos de Mexico, Bristol Meyers, Philip Morris, PaineWebber Utility Fund and Atlas Global Growth Fund; on July 1, Claimant's account had sufficient cash to purchase 200 shares of Philips and Claimants ordered Manley to purchase 200 shares at market, which Manley did; if Claimants wanted to make additional purchase in Philips, they had the authority to so order, which they never did; in December 1993, Claimants instructed Manley that they were going to take over all activities in their account and their account was no longer affected by recommendations from Manley; whatever happened to claimants' account after that day is not the responsibility of Manley; and no private right of action exists to claim injury as a result of a broker's lack of registration to sell securities.

RELIEF REQUESTED

Claimant requested an award of the following: That PWI be instructed to pay Claimants a total of \$95,884.36, plus delivery of 1260 shares of Philips Electronics stock in return for Claimants transferring to PWI 2200 shares of Blackrock No Amer Gvot In Tr (BNA), 3,569.682 shares of PW High Income Fd B (PHIAX), 1000 shares of Van Kampen Amer Cap Value Muni (VKV), and 950 shares of Nuveen Quality Income Muni Fund Inc (NQU); and punitive damages in the amount of \$100,000.

PWI requested that the claims asserted against them be denied in its entirety and that this arbitration be removed from Whittington's disciplinary record, and that costs, expenses and attorney fees be assessed against Claimants.

Manley requested that Claimants' claims be dismissed, Claimants be sanctioned by being required to pay Manley's attorneys' fees and expenses for having to respond to a frivolous claim, and for an award of costs.

OTHER ISSUES CONSIDERED & DECIDED

On or about March 7, 1996, Manley filed a request that the Director of Arbitration change the venue of the hearing from St. Louis, Missouri to Dallas, Texas. On or about March 26, 1996, PWI and Whittington filed their own request for change of venue to Dallas, Texas. After review of the Respondents' requests, and Claimants' Responses dated March 29, 1996 and April 1, 1996, Respondents' Requests were denied.

On or about October 17, 1996, Claimants filed a Request to Amend their Statement of Claim. After review of the Request, and the Respondents' November 5, 1996 and November 1, 1996 responses thereto, Claimants' Request to Amend their Statement of Claim was granted by Arbitrator Watkins.

On or about October 18, 1996, Manley and PWI filed a Renewed Motion to Change the Hearing Site to Dallas, Texas. After review of the motion, and Claimants' response dated October 27, 1996, Arbitrator Watkins denied the motion.

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 original(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

AWARD

The undersigned arbitrators, after carefully considering all the pleadings, evidence and testimony relating to the above-referenced matter in controversy, hereby rule and order as follows:

Claimants' claims for relief as against Respondents, Richard Manley and N. Glenn Whittington, to the extent that they existed, having been expressly disavowed and thus abandoned by Claimants during the course of the hearing of the present matter in controversy, are hereby denied, in full, with prejudice.

As to the remaining claims of Claimants against Respondent PaineWebber, Inc., the Panel of Arbitrators finds against the Claimants and in favor of Respondent, PaineWebber, Inc.

With respect to the prayer of Respondent, PaineWebber, Inc., for the return of the \$15,000.00 voluntarily paid to Claimants by Respondent, PaineWebber, Inc., said prayer/request is hereby denied.

With respect to the prayer of Respondent, PaineWebber, Inc., for recovery of attorney's fees and expenses incurred in connection with the present matter in controversy, said request is hereby denied.

After careful consideration of all of the facts, evidence adduced, and testimony elicited, it is clear to the Arbitration Panel that, unfortunately, the Claimants were not capable of understanding or appreciating the significance of prior efforts to assist the Claimants and, further, the Claimants were without sufficient knowledge or support to evaluate the risks of arbitration or the value of pre-hearing voluntary contribution and settlement efforts of Respondents, PaineWebber, Inc.

As a result, the Panel hereby expressly instructs the NASD to expunge from the NASD records of N. Glenn Whittington and Richard Manley and PaineWebber, Inc. any record of a claim for pursuit of monetary recovery by Robert Meyer and Nancy Meyer, the Claimants herein, against N. Glenn Whittington and Richard Manley and PaineWebber, Inc.

Further, it is the opinion of the Panel of Arbitrators herein that the Claimant, Robert Meyer, moved forward with the hearing of the present matter in controversy in no small part due to inappropriate and unfounded advice, ideas and thoughts being implanted in said Claimant's mind by third parties prior to the hearing of this present matter in controversy. The Arbitrators believe this to have continued the "dispute" between the parties far beyond the existence of any reasonable basis for dissatisfaction. Accordingly, the Panel of Arbitrators assess the forum fees incurred in connection with the present matter in controversy solely against the Claimant, Robert Meyer. The Arbitrators herein expressly deny any request to have Respondents reimburse Claimant for the hearing deposit paid to the NASD.

It is further the recommendation of the Arbitration Panel that a disciplinary referral is not appropriate in this case.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were two (2) sessions x \$750 = \$1,500 in forum fees. Pursuant to §10332(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 §10332(c) of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$200 and shall **retain** as forum fees the hearing session deposit in the amount of \$750 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Claimants.

Pursuant to §10333 of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$200 previously paid by PaineWebber, Inc.

Additional forum fees in the amount of \$750 are assessed by the arbitrators against the Claimants.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Dated:

Albert S. Watkins /s/
Albert S. Watkins
Public Arbitrator, Presiding Chair

May 12, 1997

Bryan A. McDonald /s/
Bryan A. McDonald
Industry Arbitrator

May 8, 1997

Marvin Klamen /s/
Marvin Klamen
Public Arbitrator

May 8, 1997