

96-01336

NATIONAL ASSOCIATION OF SECURITIES DEALERS ARBITRATION

In the Matter of the
Arbitration Between

ADOLPH W. DUNSING,

Claimant,

and

PAINWEBBER, INC.,

Respondent.

NASD Case Number 96-01336

DECISION

Adolph W. Dunsing
Pro Se
133 Route 32A
Saugerties, New York 12477

Lisa Catalano Tillem, Esq.
PaineWebber, Inc.
1200 Harbor Boulevard
Weehawken, New Jersey 07087-6791

Respondent **PaineWebber, Inc.**, by undated Notice of Motion, seeks to dismiss the Claimant's statement of claim as time-barred under Section 15 of the National Association of Securities Dealers (NASD) Code of Arbitration Procedure.

A telephone conference was held on Friday, June 6, 1997, at 11:00 a.m. between the Claimant, **Adolph W. Dunsing**; his son, William Dunsing; Lisa Catalano Tillen, attorney for the Respondent; and the three arbitrators, Sheri Lynn Ackerman-Dwyer, Timothy A. Meigher and David W. Morris, Esq. At one point during the conference, a Mr. Rogers, also an attorney with **PaineWebber, Inc.**, came on the line to explain certain facts with regard to a class action lawsuit pending in the Southern District of New York and the status of the **PaineWebber Limited Partnership Claims Fund**.

FACTS

Claimant purchased certain limited partnerships through the Respondent **PaineWebber, Inc.**, in 1986. Shortly thereafter, the Claimant began to raise questions about these investments and communicated extensively with the Respondent and with the NASD.

In 1994, a class action was started, and Claimant was included as a Party Plaintiff. This class action was against **PaineWebber, Inc.** and involved securities such as those purchased by the Claimant, among others..

In December, 1996, the Claimant opted out of the class action and was permitted to do so by order of District Court Judge Stein of the Southern District of New York. According to the Respondent, it would be virtually certain that should this arbitration proceeding be dismissed, Claimant could re-join the class action lawsuit, which is still pending in the United States District Court for the Southern District of New York. In addition and in accordance with

footnote on page 1 of the Motion to Dismiss, "Should the NASD or the Panel dismiss this proceeding, Claimant would still be eligible to participate in PaineWebber's limited partnership claims fund. Pursuant to a settlement between PaineWebber and the SEC, a \$40 million fund has been established to consider claims relating to PaineWebber's sale of certain limited partnership including, but not limited to, the ones at issue in this arbitration." discussions were had with Mr. Rogers of the Respondent during the telephone conference. He indicated that a re-joining of the class action was a virtual certainty, but to become a Claimant in the Securities and Exchange Commission settlement fund would require the consent of the independent administrator.

DECISION

Section 10304 of the Uniform Code of Arbitration Procedures provides as follows:

" 10304. Time Limitation Upon Submission.

"No dispute, claim, or controversy shall be eligible for submission to arbitration under this Code where six (6) years have elapsed from the occurrence or event giving rise to the act or dispute. claim or controversy. This Rule shall not extend applicable statutes of limitations, nor shall it apply to any case which is directed to arbitration by a court of competent jurisdiction."

Inasmuch as the events giving rise to this dispute, that is, the purchase of limited partnerships, all occurred in 1986, and the claim itself was not filed with the NASD until 1996, the statute of limitations has clearly expired, and the claim must be and is hereby dismissed.

Pursuant to Section 10307 of the Code, the time limitations may be tolled during the pending of legal proceedings involving the same claim. On examining into the issue of the Federal District Court action, it was learned that the action was not commenced until 1994 more than eight (8) years after the purchase of Mr. **Dunsing's** securities, Thus, the tolling statute is of no assistance in sustaining this claim.

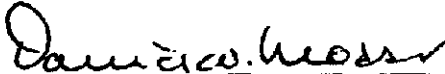
It is recommended by this arbitration panel that the Federal District Court for the Southern District of New York permit Mr. **Dunsing** to re-join the pending class action as : Party-Plaintiff, or if Mr. **Dunsing** be so advised, that the independent Administrator of the **PaineWebber** Limited Partnership Claim Fund permit Mr. **Dunsing** to institute a claim against that Fund.

Any additional costs of the arbitration are to be assessed against the Claimant.

Dated: June 10, 1997


 Sheri Lynn Ackerman-Dwyer


 Timothy A. Meigher


 David W. Moms