

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of Arbitration Between

Karen Rossi,

Claimant,

and

No. 96-03344

PaineWebber, Inc., and Todd W. Acuff,

Respondents.

REPRESENTATION OF PARTIES

Claimant, Karen Rossi, was represented by Jane L. Stafford, Esquire of Spencer, Fane, Britt & Browne LLP, located in Kansas City, Missouri.

Respondents, PaineWebber, Inc. and Todd W. Acuff, were represented by Richard B. Walsh, Esquire of Lewis, Rice & Fingersh, located in St. Louis, Missouri.

CASE INFORMATION

Karen Rossi's Statement of Claim was filed on or about August 5, 1996.

Karen Rossi's Submission Agreement was signed on July 10, 1996.

PaineWebber, Inc. and Todd W. Acuff's Statement of Answer was filed on or about October 11, 1996.

PaineWebber, Inc.'s Submission Agreement was signed on September 20, 1996, by Eoan Charkes, Corporate Vice President of PaineWebber, Inc.

Todd W. Acuff's Submission Agreement was signed on September 16, 1996.

HEARING INFORMATION

A pre-hearing conference was held on April 21, 1997 for one (1) session.

The hearing was held on: April 29, 1997 for two (2) sessions;
 April 30, 1997 for two (2) sessions; and

May 1, 1997 for three (3) sessions.

The hearing was held in Kansas City, Missouri.

CASE SUMMARY

Claimant, Karen Rossi ("Claimant"), brought this action to recover losses in her account allegedly resulting from the wrongful acts of Todd W. Acuff ("Acuff"), a registered representative of PaineWebber, Inc. (hereinafter collectively referred to as "Respondents").

Claimant alleged that Respondents churned her account for the sole and exclusive benefit to receive commissions, and failed to follow her instructions at a time when she unequivocally desired no more investment risk and requested that her investments be liquidated. Claimant asserted that Respondents pursued abusive sales practices and placed unsuitable and speculative investments in her account, in complete and reckless disregard of her expressed instructions, investment objectives and rights. Claimant further asserted that this conduct was perpetrated against her based on material misrepresentations and omissions as to the risky and speculative nature of the investment activity and in wanton and wilful disregard of Claimant's rights and interests.

Claimant asserted the following legal claims against Respondents: violation of the Missouri Blue Sky Laws; fraud, churning, control, and excessive trading in violation of § 10(b) and Rule 10(b)-5 of the Securities and Exchange Act of 1934; violation of self regulatory organization rules, including NYSE Rule 405 and Art. III, § 2(a) of the NASD Rules of Fair Practice; common law fraud; liability of PaineWebber, Inc. under the agency doctrine; negligent supervision on the part of PaineWebber, Inc.; liability of PaineWebber, Inc. under control person liability pursuant to § 20(a) of the Securities and Exchange Act of 1934; general negligence; and breach of fiduciary duty.

Respondents denied the allegations set forth in the Statement of Claim as they relate to any wrongdoing on their part. Respondents contended that Claimant is an experienced securities investor who chose to pursue an aggressive investment strategy and now is blaming her securities broker for losses which she willingly and knowingly risked. According to Respondents, Claimant was fully informed by Acuff of the potential benefits and risks of a growth and speculation strategy, and nevertheless directed Acuff and other PaineWebber, Inc. employees to invest her account in stocks that she chose and in a manner intended to produce the highest return in a short amount of time. Respondents further argued that Claimant was actively involved in managing her account, and that whenever Claimant instructed Acuff or other PaineWebber, Inc. employees to buy or sell certain stocks, they followed these instructions. Respondents maintained that Claimant never issued instructions to liquidate her account prior to early 1996, at which time Acuff began to sell substantially all of Claimant's securities.

Respondents asserted the following affirmative defenses: (1) the Statement of Claim fails to state a claim against Respondents upon which relief may be granted; (2) the damages for which Claimant

seeks to hold Respondents liable resulted in whole or in part from Claimant's acts or omissions, and Respondents are in no way responsible for or liable to Claimant for her own wrongful or negligent acts or omissions; (3) the damages for which Claimant seeks to hold Respondents liable were approximately caused by Claimant's own failure to use reasonable means to mitigate damages properly; (4) Claimant, through her own conduct, approved, authorized and/or ratified Respondents actions and, accordingly, Claimant is estopped from recovery herein; (5) Claimant's alleged damages were caused by Claimant's own conduct or negligence, or in the alternative, Claimant was guilty of contributory negligence, and is therefore precluded from recovery herein; (6) Claimant, through her own conduct, has waived any and all rights that she may have against Respondents; (7) all risks were fully explained to Claimant and she knowingly, willingly, and voluntarily assumed the risks of investing with Respondents; (8) Claimant failed to use the requisite due diligence in monitoring, managing, and handling her account and investments; (9) Claimant knew at all times of the transactions in her account with Respondents and of the profits and losses she was incurring; (10) if any fault is found on the part of Respondents, liability for non-economic loss to Claimant is no greater than that percent of said damages which equals a percent of fault attributed to Respondents; (11) Claimant's Statement of Claim is barred by the applicable statute of limitations; (12) Claimant's claims are barred by the doctrine of laches; and (13) as a result of Claimant's failure to object or notify Respondents of the acts and omissions of which she complains within 10 days of receipt of written confirmations, account statements and other documents advancing or setting forth transactions in Claimant's account, Claimant is barred from recovering from Respondents under her Client Agreement with PaineWebber, Inc. and under Missouri Revised Statute § 400.8-319.

RELIEF REQUESTED

Claimant, Karen Rossi, requested an award for: compensatory damages in an approximate amount of \$254,600; interest; attorneys fees; costs, disbursements, and expenses; and punitive damages.

Respondents PaineWebber, Inc. and Todd W. Acuff requested that the claims asserted against them be dismissed.

OTHER ISSUES CONSIDERED AND DECIDED

At the hearing in this matter, Claimant, Karen Rossi, moved to take adverse inference for failure to produce per pre-hearing conference. This motion was subsequently withdrawn.

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 the NASD Regulation, Inc. Office of Dispute Resolution.

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. Respondents, PaineWebber, Inc. and Todd W. Acuff, are jointly and severally liable for and shall pay Claimant, Karen Rossi, compensatory damages in the amount of \$4,500;
2. That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There was one (1) pre-hearing conference x \$300 = \$300, and there were seven (7) hearing sessions x \$750 = \$5,250. Total forum fees are thus \$300 + \$5,250 = \$5,550. Pursuant to § 10332(b) of the NASD 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 § 10322(c) of the Code, the 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 the NASD Regulation, Inc. Office of Dispute Resolution by Claimant, Karen Rossi.

The NASD Regulation, Inc. Office of Dispute Resolution shall reimburse Claimant, Karen Rossi, her credit for overpayment in the amount of \$300.

Pursuant to § 10333 of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$350 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Respondent, PaineWebber, Inc.

Respondents PaineWebber, Inc. and Todd W. Acuff are jointly and severally liable for and shall pay additional forum fees in the amount of \$4,100 (= \$5,550 total forum fees - \$750 hearing sessions

NASD Regulation, Inc. Office of Dispute Resolution
Arbitration No. 96-03344
Award Page 5 of 5

deposit by Claimant, Karen Rossi - \$700 credit for overpayment by Respondent, PaineWebber, Inc.).

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

Concurring Arbitrators' Signatures

<u>Richard E. McEachen</u>	/s/	<u>June 6, 1997</u>
Richard E. McEachen, Esquire		Dated:
Chairperson		
Public Arbitrator		

<u>Richard E. Olson</u>	/s/	<u>June 6, 1997</u>
Richard E. Olson		Dated:
Panelist		
Public Arbitrator		

<u>Jeff Breault</u>	/s/	<u>June 5, 1997</u>
Jeff Breault		Dated:
Panelist		
Industry Arbitrator		