

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimants

Albert E. Zacharias and Delbert Cunningham
co-trustees of
Albert E. Zacharias Living Trust

96-04944

Name of Respondent

PaineWebber, Inc.

CASE SUMMARY

In a claim filed with National Association of Securities Dealers Regulation, Inc. on November 6, 1996 Claimants Albert E. Zacharias and Delbert Cunningham, as co-trustees of Albert E. Zacharias Living Trust through Albert E. Zacharias ("Claimant"), who appeared Pro Se, alleged that he was forced to change brokerage house due to negligent, unprofessional and threatening actions of Respondent's Santa Rosa office. Claimant further averred that in early 1992 Jason L. Seale, III ("Seale") "brought him into PaineWebber" and that his portfolio included \$60,000.00 worth of PW High Income Fund and \$40,000 worth of PW US Government Income Fund. Claimant also alleged that Seale informed him that he was resigning from PaineWebber in June 1995. Claimant alleged that up to September 1995, he dealt with Larry Stater ("Stater") Respondent's Account Executive who had replaced Seale. Claimant further alleged that on September 18, 1995 he met with Seale and began the process of transferring his accounts.

Claimant also alleged that when he informed Stater about his decision to transfer his accounts, he was reproached and informed that Seale had \$80,000 and \$100,000 claims against him. Claimant asserted that Respondent failed to inform him about his broker being under surveillance for six months, never discussed the option of leaving the PW High Income and PW U.S. Government Funds with PaineWebber and indicated that the only charges which were discussed were the \$50.00 fees payable for cashing in each account. Claimant contended that he completed the paperwork to effect the transfer with Seale and was informed of all the charges when he received confirmation of the liquidation. Claimant contended that Respondent is responsible for the loss which he incurred on the sale of the PW US Government Income Fund and PW High Income Fund and the transfer of his account.

Respondent PaineWebber, Inc., through its in-house counsel Lisa Tillem, Esq., maintained that on or about April 14, 1992 trustees Albert Zacharias and Delbert Cunningham opened the Albert Zacharias Living Trust, Account #KH 86849 with Seale as the initial Account Executive. Respondent further maintained that the account was taken over by Stater after Seale left PaineWebber on June 23, 1995. Respondent also maintained that Claimant's claim relates to the purchase of 3,996.004 shares of Government Fund on November 24, 1992 at \$10.01 per share, purchase of 5,056.89 shares of Income Fund at \$7.21 per share on November 25, 1992, purchase of 2,347.418 shares at \$8.52 on April 18, 1994 ("Funds"); and the sale of 3,996.004 shares of Government Fund at \$9.07 per share on or about October 13, 1995 and sale of 7,404.308 shares of Income Fund at \$7.21 per share.

Respondent contended that contrary to Claimant's allegations that he lost \$10,043.90, the total profit on the Funds were \$7,329.39. Respondent further contended that the confirmation and prospectus provided Claimant with notification about the possibility of future fees and charges upon the sale of the Funds. Respondents also contended that during a meeting with Stater and Sales Assistant Laura Herron Claimant was notified orally about the deferred sale charge, the implications of the charge and the fact that the Funds could remain in the account rather than be sold, so as not to incur the charge. Respondent maintained that Claimant was informed of the risks of his investments and is not entitled to any alleged damages because he is dissatisfied with the performance of the Fund. Concerning Claimant's desire for employee information, Respondent further maintained that Stater and Branch Manager William Hendricks responded properly to Claimant's inquiries about Seale. Respondent also maintained that the transactions complained of in Claimant's Statement of Claim were authorized by Claimant, who was in control of the assets in his account.

RELIEF REQUESTED

Claimant Albert E. Zacharias and Delbert Cunningham, as co-trustees of the Albert E. Zacharias Living Trust requested \$10,000.00 in actual damages.

Respondent PaineWebber, Inc. requested that Claimant's demand for damages be denied in its entirety and that all cost, expenses and attorneys fees be assessed against Claimant.

AWARD

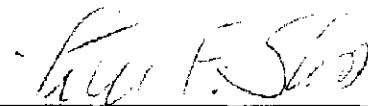
Pursuant to Rule 10302 of NASD Regulation, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Peter F. Sloss, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants Albert E. Zacharias and Delbert C. Cunningham, as co-trustees of Albert E. Zacharias Living Trust on November 18, 1996 and by Respondent PaineWebber, Inc. on January 15, 1997.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of Claimant Albert E. Zacharias and Delbert C. Cunningham as co-trustees of the Albert E. Zacharias Living Trust against Respondent PaineWebber, Inc. are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with National Association of Securities Dealers Regulation, Inc. by the Claimants shall be retained by NASD Regulation, Inc.
4. All other relief requests are denied.

AFFIRMATION

I, **PETER F. SLOSS**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

Date of Decision: May 19, 1997