

NASD REGULATION, INC.
AWARD

In the Matter of the Arbitration Between

Name of Claimant

Marble Scholarship Committee

vs.

Case No.
96-05380

Name of Respondents

Marsh Block & Co., Inc.
Carmen Popescu
Schroder Wertheim & Co., Inc.
PaineWebber, Inc.
Stephen G. Zavada, Jr.

REPRESENTATION

For Claimant Marble Scholarship Committee ("Claimant") appeared Frank Patton, Jr., Esq., of the firm Forsythe Holbrook Patton Bovone & Ellis, located in New York, New York.

For Respondents Marsh Block & Co., Inc. ("Marsh Block") and Carmen Popescu ("Popescu") appeared Ronald C. Minkoff, Esq. of the firm Beldock Levine & Hoffman, LLP, located in New York, New York.

For Respondent Schroder Wertheim & Co., Inc. ("Schroder Wertheim") appeared Michael M. Gless, Esq. of the firm Keesal, Young & Logan, located in Long Beach, California.

For Respondent PaineWebber, Inc. ("PaineWebber") appeared Stephanie Morse-Shamosh, Esq., in-house counsel at PaineWebber, located in Weehawken, New Jersey.

Respondent Stephen G. Zavada, Jr. ("Zavada") did not enter an appearance in this matter.

CASE INFORMATION

Claimant's Statement of Claim was filed on December 4, 1996.

Claimant's Submission Agreement was signed on November 23, 1996.

Claimant's Amended Statement of Claim was filed on September 25, 1997.

Claimant's Amended Submission Agreement was signed on October 16, 1997.

Respondents Marsh Block and Popescu's Joint Statement of Answer was filed on January 15, 1997.

Respondent Marsh Block's Submission Agreement was signed on January 15, 1997.

Respondent Popescu's Submission Agreement was signed on December 4, 1997.

Respondents Marsh Block and Popescu's Joint Statement of Answer to Claimant's Amended Statement of Claim was filed on November 12, 1997.

Respondent Schroder Wertheim's Statement of Answer and Motion to Dismiss was filed on January 30, 1997.

Respondent Schroder Wertheim's Submission Agreement was signed on January 29, 1997.

Respondent PaineWebber's Statement of Answer was filed on February 13, 1997.

Respondent PaineWebber's Submission Agreement was signed on February 12, 1997.

Respondent Zavada did not file a Statement of Answer or Submission Agreement.

HEARING INFORMATION

Hearing Dates/Sessions:	June 15, 1998	-	2 sessions
	June 16, 1998	-	2 sessions
	June 17, 1998	-	2 sessions
	September 23, 1998	-	2 sessions
	December 8, 1998	-	2 sessions
	December 9, 1998	-	2 sessions

The hearings, excluding the December 8, 1998 hearings, were conducted at the offices of NASD Regulation, Inc. located in New York, New York. The December 8, 1998 hearings were conducted at Club Quarters, located in New York, New York.

CASE SUMMARY

Claimant alleged that, in May of 1993, Zavada recommended that Claimant transfer it's account to PaineWebber's Weehawken, New Jersey office. Claimant maintained that Zavada sold it's conservative investment portfolio and, without informing Claimant of the risk, invested all, or virtually all, of the investment portfolio in volatile stock options and other high risk investments. Claimant alleged that, in December of 1993, because of the volume and speculative nature of the trades, PaineWebber concluded that the investments were unsuitable and that the trades should not be continued in the account at PaineWebber. Claimants asserted that, in January of 1994, Zavada then opened new accounts for Claimant at Schroder Wertheim and Marsh Block. Claimant contended that, at this time, it believed that Zavada was affiliated with both firms. Claimant asserted that, since it was never informed that Schroder Wertheim functioned only as a clearing broker with no responsibility for the account, both Schroder Wertheim and Marsh Block were fully responsible for the conduct of the account.

Claimant alleged that, throughout the time it had an account at Schroder Wertheim and Marsh Block, virtually all of it's funds were, again, invested in unsuitable, high risk stock options and

similar high risk investments. Claimant further alleged that neither Schroder Wertheim, Marsh Block, or Marsh Block's trader, Popescu, informed Claimant that such investments were unsuitable or risky investments for it. Claimant asserted that, during the period of January, 1994 through November 1995, Schroder Wertheim issued monthly statements which materially inflated the value of the account. Claimant also asserted that, as a result, false gains were reported and actual losses in the account were concealed. Claimant alleged that both Popescu and Zavada knew that the account statements were overvalued but fraudulently concealed and withheld this information from Claimant. Claimant maintained that, due to these material misrepresentations, it could not adequately protect its investment. Claimant contended that, in December of 1995, when it transferred its entire portfolio to Smith Barney & Co., it became aware that the account had been overvalued and that it had suffered huge losses.

Respondents Marsh Block and Popescu maintained that Zavada was Claimant's agent operating under an executed power of attorney, not an employee of Marsh Block or any of the other broker-dealer Respondents. Marsh Block and Popescu asserted that they acted only as a discount broker, executing Claimant's orders at a reduced price and providing no other investment services. They further asserted that Popescu solely performed clerical functions without responsibility for determining whether customer investments were unsuitable. Marsh Block and Popescu contended that it was Schroder Wertheim, the clearing broker, who reported account positions and sent monthly account statements. Marsh Block and Popescu also contended that it had no control or participation in record-keeping functions and relied on Schroder Wertheim to provide it with accurate records. They also alleged that Zavada had extensive investment experience and, acting on Claimant's behalf, repeatedly purchased options for Claimant's account. Marsh Block and Popescu maintained that, until late 1995, no employee or representative of Claimant contacted Marsh Block to question or object to any specific trades, the investment strategy, any margin calls or the account statements which reflected profit volatility.

Respondent Schroder Wertheim maintained that, since it acted merely as a clearing broker, it did nothing more than perform ministerial "back office" duties such as processing trade confirmation and monthly account statements for Marsh Block's customer accounts. Schroder Wertheim asserted that it had no contact or direct communication with Claimant or any of Marsh Block's customers. Schroder Wertheim contended that, by signing the Margin Account Agreement and Loan Consent, Claimant had notice of the firm's limited responsibility and expressly acknowledged that it had no responsibility or liability to Claimant for acts or omissions by Marsh Block.

RELIEF REQUESTED

Claimant requested an unspecified amount of compensatory damages including market adjusted loss, disgorgement of Respondents' compensation derived from Claimant's accounts, accrued interest from the date of loss to the date of award and final judgment, punitive damages in an amount to be determined by the Arbitrators, costs, expert and witness fees, administrative expenses, reasonable attorneys' fees, and any such further relief as the Panel deems just and equitable.

Respondent Marsh Block and Popescu requested an award dismissing all claims asserted against it, attorney's fees and costs, and any such further relief as the Panel deems just and equitable.

Respondent Schroder Wertheim requested that Claimant's claims asserted against it should be dismissed in its entirety as well as costs and 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 original remains on file with NASD Regulation, Inc.

Prior to the hearing, Claimant entered into a settlement agreement with Respondent PaineWebber and dismissed, with prejudice, all claims asserted against it.

The panel made the following determinations concerning Zavada who did not file a Statement of Answer or a Submission Agreement and did not appear at the hearing in this matter:

1. Pursuant to Rule 10101 of the Code of Arbitration Procedure (the "Code"), the arbitrators found subject matter jurisdiction over this entire controversy.
2. The panel found that Zavada was a person associated with a member of the NASD at the time this controversy arose. Accordingly, the panel found personal jurisdiction over Zavada pursuant to Rule 10301 of the Code.
3. The panel found that Zavada was required to file a Statement of Answer and Submission Agreement with NASD Regulation pursuant to Rule 10314(b) of the Code. In this regard, the panel found that the Statement of Claim was properly served upon Zavada pursuant to Rule 10314 (a) of the Code.
4. In addition, in accordance with Rules 10310, 10315 and 10318 of the Code, the panel found that NASD Regulation provided Zavada with "due notice" of the hearings conducted in this matter by regular and certified mail. The panel further determined to proceed with the hearing without Zavada whose absences was unexcused.

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. Respondent Marsh Block be and hereby is liable and shall pay Claimant a total of \$19,800.00 in compensatory damages;

2. Respondent Schroder Wertheim be and hereby is and shall pay Claimant a total of \$16,200.00 in compensatory damages;
3. Claimant's claims against Respondent Popescu are hereby dismissed;
4. All other claims for relief are hereby denied.

OTHER COSTS

Pursuant to Rule 10333 of the *NASD Code of Arbitration Procedure* ("*Code*") Marsh Block and Schroder Wertheim have paid NASD Regulation, Inc. the \$350.00 member surcharge previously invoiced.

Pursuant to Rule 10333 of the *Code* PaineWebber shall pay NASD Regulation, Inc. the \$350.00 past due member surcharge previously invoiced.

FORUM FEES

Pursuant to Rule 10332(c) of the *Code*, the arbitrators have determined that the NASD will retain the \$250.00 non-refundable filing fee deposited by Claimant and have assessed the following Forum Fees:

12 Hearing Sessions x \$600.00 = \$7,200.00

1. Respondent Marsh Block be and hereby is liable and shall pay NASD Regulation, Inc. the sum of \$3,600.00, representing one-half of the forum fees assessed.
2. Respondent Schroder Wertheim be and hereby is liable and shall pay NASD Regulation, Inc. the sum of \$3,600.00, representing one-half of the forum fees assessed.

Fees are payable to NASD Regulation, Inc.

ARBITRATION PANEL

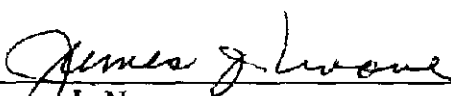
George R. Freund	-	Public Chairperson
Harris Gould, Esq.	-	Public Arbitrator
James J. Noone	-	Industry Arbitrator

ARBITRATOR'S SIGNATURE


James J. Noone

Date of decision: March 29, 1999


I, **James J. Noone**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.


James J. Noone

ARBITRATION PANEL

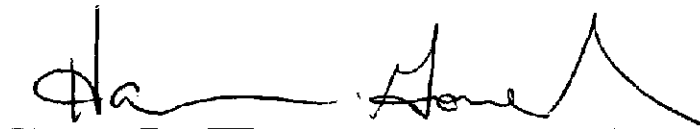
George R. Freund	-	Public Chairperson
Harris Gould, Esq.	-	Public Arbitrator
James J. Noone	-	Industry Arbitrator

ARBITRATOR'S SIGNATURE


Harris Gould, Esq.

Date of decision: March 29, 1999


I, **Harris Gould, Esq.**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.


Harris Gould, Esq.

ARBITRATION PANEL

George R. Freund	-	Public Chairperson
Harris Gould, Esq.	-	Public Arbitrator
James J. Noone	-	Industry Arbitrator


ARBITRATOR'S SIGNATURE



George R. Freund

Date of decision: March 29, 1999

I, **George R. Freund**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



George R. Freund