

NASD REGULATION, INC. AWARD

In the Matter of the Arbitration Between

Names of Claimants

Mickie Spell
Deborah Spell

96-05651

Names of Respondents

PaineWebber, Inc.
Bill Kerr, Jr.
Michael J. Lingner

REPRESENTATION

For Claimants Mickie Spell and Deborah Spell ("Claimants") appeared Malvern F. King, Jr., Esq. of the firm Pulley, Watson, King & Lischer, P.A., located in Durham, North Carolina.

For Respondents PaineWebber, Inc. ("PaineWebber") and Michael J. Lingner ("Lingner") appeared Lisa Catalano Tillem, Esq., in-house counsel for Respondent PaineWebber, located in Weehawken, New Jersey.

Respondent Bill Kerr, Jr. ("Kerr") appeared pro se.

CASE INFORMATION

Claimants' Statement of Claim was filed on December 18, 1996. Claimants' Submission Agreements were signed on November 26, 1996.

Respondents PaineWebber and Lingner filed a Joint Statement of Answer on March 11, 1997. Respondent PaineWebber's Submission Agreement was signed on March 11, 1997. Respondent Lingner failed to submit a properly executed Submission Agreement.

Respondent Kerr filed a Statement of Answer on March 13, 1997. Respondent Kerr failed to submit a properly executed Submission Agreement.

HEARING INFORMATION

Hearing Date/Sessions: November 18, 1997 - Two Sessions

The hearing was conducted at the Club Hotel by Doubletree located in Raleigh, North Carolina.

CASE SUMMARY

Claimants alleged that, on or about November 27, 1992, they opened a new account with Respondent PaineWebber, and that Respondent Kerr was the account executive. Claimants maintained that their investment objectives were, in order of priority, (1) income, (2) investment grade, (3) growth, and (4) speculation. Claimants alleged that Respondent Kerr's stock trades and handling of their account were unsuitable for inexperienced investors such as themselves. Claimants also alleged that Respondent Kerr made unauthorized trades in their account and overtraded or churned their account during 1993, 1994 and 1995. Claimants further alleged that Respondents Kerr, Lingner and PaineWebber owed a fiduciary duty to them to invest their account in accordance with their instructions and in keeping with their best interest, which they violated in the handling of their account. Claimants asserted that Respondent Kerr's handling of their account was so egregious as to amount to fraud. Claimants also asserted that Respondent Lingner, as manager of Respondent Kerr, was responsible for managing the activities of Respondent Kerr with respect to his brokerage accounts, but failed to do so. Claimants further asserted that Respondent PaineWebber was responsible for Respondents Kerr and Lingner and their actions in improperly trading and inadequately supervising their account.

Respondents PaineWebber and Lingner maintained that, although Claimants never executed the proper written authorization for Respondent Kerr to trade their account on a discretionary basis, Claimants did give him both oral and *de facto* authority to trade their account for them. Respondents PaineWebber and Lingner also maintained that Claimants never voiced an objection to either Respondent Kerr or Respondent Lingner that unauthorized trading was taking place, nor did they ever suggest that the trading Respondent Kerr was doing on their behalf was unsuitable for them. Respondents asserted that Claimants received written confirmations of every trade, as well as account statements on a monthly basis. Respondents PaineWebber and Lingner further maintained that the Claimants failed to mitigate their damages and were not entitled to the damages they sought.

Respondent Kerr joined in the Statement of Answer filed by Respondents PaineWebber and Lingner.

RELIEF REQUESTED

Claimants requested:

1. Return of money invested by them with Respondents less withdrawals, a sum in the amount of \$69,860.13.
2. Margin loan interest charged them during 1993, 1994, 1995 and 1996 in the amount of \$8,311.56.
3. Commissions charged them on unauthorized trades by Respondent Kerr during 1993, 1994 and 1995 in the amount of \$53,809.00.
4. Interest they would have earned on their investment in the amount of \$19,565.35.
5. Treble damages in the amount of \$454,638.12.

6. Punitive damages as the panel may determine using its discretion.
7. Cancellation of margin loan.
8. Attorneys' fees incurred in the prosecution of their claim.
9. Interest at 8% legal rate on the award of claim from the date of filing of claim.
10. Costs incurred in the prosecution of this claim, including filing fees, forum fees and witness fees.
11. Such other relief as the panel deemed reasonable and proper.

Respondents requested that the Statement of Claim be dismissed and an award be granted to Respondent PaineWebber and Respondent Lingner for their costs and expenses in defending the claim.

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 originals remain on file with the NASD.

Respondents PaineWebber and Lingner settled with Claimants on the eve of the hearing and did not attend the proceeding.

The panel made the following determinations concerning Respondent Kerr, who did not appear at the hearing in this matter and failed to file a properly executed Submission Agreement:

1. Pursuant to Rule 10101 of the Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that Respondent Kerr was a person associated with a member of the NASD at the time this controversy arose. Accordingly, the panel found personal jurisdiction over Respondent Kerr pursuant to Rule 10301 of the Code.
3. The panel found that Kerr was required to file a 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 Kerr pursuant to Rule 10314(a) of the Code.
4. In accordance with Rules 10310, 10315, and 10318 of the Code, the panel found that NASD Regulation provided Respondent Kerr 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 Respondent Kerr, whose absence 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 Kerr be and hereby is liable and shall pay to Claimants the sum of \$45,700.00, plus interest at the rate of 7% from November 17, 1997 to the date of payment.
2. Respondent Kerr be and hereby is liable and shall pay to Claimants the sum of \$8,000.00 in attorneys' fees. Attorneys' fees are awarded to compensate for egregious behavior of Respondent Kerr.
3. All other requests for relief are hereby denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$250.00 non-refundable filing fee previously submitted by the Claimants and the \$500.00 member surcharge previously paid by PaineWebber and have assessed the following forum fees:

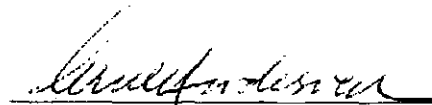
2 Hearing Sessions x \$1000.00	=	\$2000.00
Total Forum Fees	=	\$2000.00

1. Claimants be and hereby are liable and shall pay the sum of \$2,000.00, representing one-hundred percent of the total forum fees assessed. Claimants previously deposited \$1,000.00 with NASD Regulation, Inc., and, therefore, Claimants are liable and shall pay the balance of \$1,000.00.

Fees are payable to NASD Regulation, Inc.

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CONCURRING ARBITRATORS' SIGNATURES



Arne Hovdesven, Esq.
Public Arbitrator - Chairperson

Robert P. Porter
Public Arbitrator

G. Lewis Nichols
Industry Arbitrator

Date of Decision: March 10, 1998

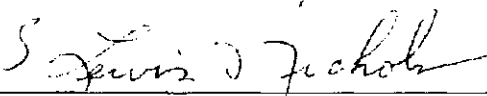
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