

**Award**  
**NASD Regulation, Inc.**

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In the Matter of the Arbitration Between

**Name of Claimant**

Michael B. Fanshel

vs.

Case No. 97-00143

**Name of Respondents**

PaineWebber, Inc.  
Smith Barney Shearson, Inc.  
Kevin J. Schaefer

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**REPRESENTATION OF PARTIES**

Claimant Michael B. Fanshel ("Claimant"): W. Brad Clark, Washington, D.C.

Respondents Smith Barney Shearson, Inc. ("SBS") and Kevin Schaefer ("Schaefer"): Joseph A. Ingrisano, Esq., Washington, D.C.

Respondents PaineWebber, Inc. ("PW") and Schaefer: Lisa Catalano Tillem, Esq. And Joel E. Davidson, Esq., New York, New York

**CASE INFORMATION**

Statement of Claim filed on or about: January 10, 1997

Claimant signed the Uniform Submission Agreement: November 8, 1996

Statement of Answer filed by Respondents, SBS, Schaefer and PW, on or about: May 9, 1997

Respondent, PW, signed the Uniform Submission Agreement: April 9, 1997

Respondents Schaefer and SBS did not execute agreements to arbitrate.

**CASE SUMMARY**

Claimant asserted the following causes of action: misrepresentations and omissions of material fact constituting fraud; and gross negligence. The causes of action relate to Claimant's investment relationship over eight years with Schaefer at both SBS and PW and the sale of Limited Partnerships and a number of High Yield, below investment grade, bonds.

Unless specifically admitted in its Answer, Respondents Schaefer, SBS and PW (collectively hereinafter referred to as "Respondents") denied the allegations made in the Statement of Claim, moved to dismiss under Rule 10304 of the NASD Code of Arbitration Procedure on the grounds that the claims were ineligible for arbitration and asserted the following defenses: claims barred by applicable statute of limitations; that all transactions were suitable

based on Claimant's sophistication and investment objectives; and assumption of risk. Respondents moved for injunctive and declaratory relief in the United States District Court for the District of Maryland and the parties entered a Stipulated Order and Judgment whereby Claimant was permanently enjoined from raising any claims with respect to investments made prior to January 13, 1991.

#### **RELIEF REQUESTED**

Claimant requested:

Compensatory Damages	\$318,249.00
Punitive/Double Damages	\$636,498.00
or Treble Damages	\$954,747.00

Respondents requested that Claimant's claims against them be dismissed in their entirety and that Claimant be assessed Respondents' costs and expenses.

#### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondents SBS and Schaefer did not file with the NASD Regulation, Inc. Office of Dispute Resolution ("NASD") properly executed submissions to arbitration but are required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

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.

The Panel considered Claimant's Motions to Compel Production and Respondents' Responses and denied the Motions.

The Panel considered Respondents' Motions to Dismiss and Claimant's Response thereto, and denied the Motion.

#### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. That Claimant's claims are denied; and
2. Claimant's claims for double or treble damages are denied; and
3. Each party shall bear its own costs and expenses with the exception of forum fees as specified below; and
4. Any and all relief not specifically addressed herein is denied.

### FEEES

Pursuant to the Code, the following fees are assessed:

#### Filing Fees

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$250.00

#### Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firms are named parties.

Member surcharge = \$350.00

#### Adjournment Fees

Adjournments requested during these proceedings:

April 19-20, 1999 adjournment by Claimant: = \$1,000.00

#### Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

1 Pre-hearing session with Panel x \$1,000.00 = \$1,000.00

Pre-hearing conference: November 30, 1998/1 session

7 Hearing sessions x \$1,000.00 = \$7,000.00

Hearing Dates: July 20, 1999/2 sessions

July 21, 1999/2 sessions

September 15, 1999/ 3 sessions

Total Forum Fees = \$8,000.00

1. The Panel assessed \$4,000.00 of the forum fees to Claimant.
2. The Panel assessed \$4,000.00 of the forum fees jointly and severally to Respondents.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. Claimant requested audio hearing transcripts at a cost of \$105.00.

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 250.00
Adjournment Fee	= \$1,000.00
Forum Fees	= \$4,000.00
Administrative Costs	= \$ 105.00
Total Fees	= \$5,355.00
Less payments	= \$1,200.00
Balance Due NASD Regulation, Inc.	= \$4,155.00

2. Respondent, SBS, be and hereby is solely liable for:

Member Fees	= \$350.00
Total Fees	= \$350.00
Less payments	= \$-0-
Balance Due NASD Regulation, Inc.	= \$350.00

3. Respondent, PW, be and hereby is solely liable for:

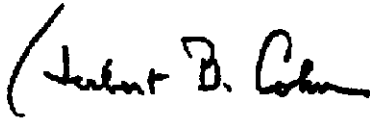
Member Fees	= \$350.00
Total Fees	= \$350.00
Less payments	= \$350.00
Balance Due NASD Regulation, Inc.	= \$-0-

4. Respondents be and hereby are jointly and severally liable for:

Forum Fees	= \$4,000.00
Balance Due NASD Regulation, Inc.	= \$4,000.00

All balances are due to NASD Regulation, Inc. and are payable within 30 days of the service date of this Award.

Concurring Arbitrators' Signatures



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Herbert B. Cohn  
Public Arbitrator, Presiding Chair

Oct. 7, 1999

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Signature Date

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Armand Philip Lione  
Public Arbitrator

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Signature Date

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E. Robert Kent, Jr.  
Industry Arbitrator

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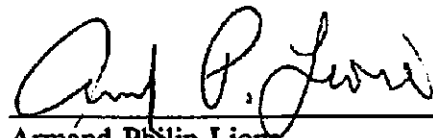
Signature Date

Oct 13, 1999  
Date of Service (For NASD office use only)

**Concurring Arbitrators' Signatures**

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Herbert B. Cohn  
Public Arbitrator, Presiding Chair

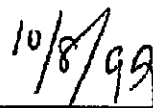


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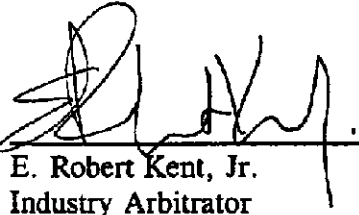
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E. Robert Kent, Jr.  
Industry Arbitrator

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10/6/99  
Signature Date

Oct 13, 1999  
Date of Service (For NASD office use only)