

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Mark and Lillian Bikash, (Claimants) vs. Michael Ewanouski, John Regan, and PaineWebber, Inc., (Respondents)

Case Number: 99-00346

Hearing Site: Boston, Massachusetts

REPRESENTATION OF PARTIES

Claimants, Mark and Lillian Bikash, hereinafter collectively referred to as "Claimants": Risa G. Sorkin, Esq., Gadsby & Hannah LLP, Boston, MA. Claimants originally appeared *pro se*.

Respondents, PaineWebber, Inc. ("PaineWebber") and John Regan ("Regan"): Andrew J. Melnick, Esq., Corporate Vice President and Associate General Counsel, PaineWebber, Inc., Weehawken, NJ.

Respondent, Michael Ewanouski ("Ewanouski"): Pete S. Michaels, Esq., Murphy, MacKenzie, Michaels & Sullivan, LLP, Boston, MA. Previously represented by: Andrew J. Melnick, Esq., Corporate Vice President and Associate General Counsel, PaineWebber, Inc., Weehawken, NJ.

CASE INFORMATION

Statement of Claim filed on or about: January 22, 1999.

Amended Statement of Claim filed on or about: November 12, 1999.

Claimants signed the Uniform Submission Agreement: January 21, 1999.

Joint Statement of Answer filed by Regan and Ewanouski on or about: May 26, 1999.

Joint Statement of Answer to the Amended Statement of Claim filed by Regan and PaineWebber on or about: November 30, 1999.

Statement of Answer to the Amended Statement of Claim filed by Ewanouski on or about: February 29, 2000.

PaineWebber signed the Uniform Submission Agreement: November 30, 1999.

Ewanouski signed the Uniform Submission Agreement: May 24, 1999.

Regan did not sign a Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duty; misrepresentations; churning; and negligent supervision. Claimants' claim involved the sale of Dean Witter proprietary mutual funds and the subsequent purchases of zero coupon Treasury bonds and annuities.

Unless specifically admitted in their Answer, Regan and Ewanouski denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a claim upon which relief may be granted; Claimants' causes of action are barred by the doctrines of ratification, waiver, and estoppel; Respondents' securities recommendations were suitable; Respondents did not act with scienter or any reckless or negligent disregard of the truth; Claimants expressly and implicitly represented to Respondents that they understood the nature and risks of the investment strategy utilized and securities purchased; Claimants knowingly assumed the risks associated with the investments made and were capable to assume those risks; the transactions complained of in the Statement of Claim were duly authorized by Claimants, who, at all times, were in sole control of the assets in the accounts; PaineWebber and its officers, agents and employees, in discharging their duties, acted in good faith and exercised the degree of care, diligence, and skill which a prudent person would exercise in similar circumstances and like positions; the damages allegedly suffered by Claimants have no causal relationship to any act committed by or legally attributable to either Respondent; the Statement of Claim fails to plead a cause of action for fraud with particularity; Claimants' alleged losses were not proximately caused by any alleged misconduct of Respondents; Claimants' damages cannot be attributed to any statements made by Respondents, but are due instead to extraneous market conditions over which Respondents have no control; Claimants had the opportunity and means to mitigate damages to their accounts but failed to do so in an appropriate and reasonable manner; and New York law governs this proceeding.

Unless specifically admitted in their Answer, PaineWebber and Regan denied the allegations made in the Amended Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a claim upon which relief may be granted; Claimants' causes of action are barred by the doctrines of ratification, waiver, and estoppel; Respondents' securities recommendations were suitable; Respondents did not act with scienter or any reckless or negligent disregard of the truth; Claimants expressly and implicitly represented to Respondents that they understood the nature and risks of the investment strategy utilized and securities purchased; Claimants knowingly assumed the risks associated with the investments made and were capable to assume those risks; the transactions complained of in the Statement of Claim were duly authorized by Claimants, who, at all times, were in sole control of the assets in the accounts; PaineWebber and its officers, agents and employees, in discharging their duties, acted in good faith and exercised the degree of care, diligence, and

skill which a prudent person would exercise in similar circumstances and like positions; the damages allegedly suffered by Claimants have no causal relationship to any act committed by or legally attributable to either Respondent; the Statement of Claim fails to plead a cause of action for fraud with particularity; Claimants' alleged losses were not proximately caused by any alleged misconduct of Respondents; Claimants' damages cannot be attributed to any statements made by Respondents, but are due instead to extraneous market conditions over which Respondents have no control; Claimants had the opportunity and means to mitigate damages to their accounts but failed to do so in an appropriate and reasonable manner; New York law governs this proceeding; and the investment activity in Claimants' accounts was not excessive.

Unless specifically admitted in his Answer, Ewanouski denied the allegations made in the Amended Statement of Claim and asserted the following defenses: Claimants' alleged damages are wholly speculative and as a well-settled matter of law, are not recoverable from Ewanouski; Claimants' alleged damages against Respondents are barred by the applicable statutes of limitation; all losses allegedly suffered were proximately caused by Claimants' own conduct or negligence; Claimants' alleged claims against Ewanouski are barred by the doctrine of consent; Claimants expressly ordered, approved, authorized, participated in, and ratified the acts and transactions complained of and upon which recovery is sought; Claimants' claims are barred by the doctrines of ratification, affirmance, waiver, and estoppel; and the damages allegedly suffered by Claimants have no causal relationship with any act committed by or legally attributable to Ewanouski and in addition have been grossly overstated by Claimants.

RELIEF REQUESTED

In their Statement of Claim, Claimants requested compensatory damages in the amount of \$74,436.00.

In their Amended Statement of Claim, Claimants requested compensatory damages in the amount of \$31,500.00; commission charges to be proven at the hearing (which are in excess of \$3,207.64); capital gains taxes in the amount of \$4,493.00; punitive damages; interest; costs; reasonable attorneys' fees; and such other relief as is just.

In their Joint Statement of Answer, Regan and Ewanouski requested dismissal of this proceeding, expungement of this claim from their records, an Award in their favor of the costs and disbursements of this proceeding, and such other and further relief as is just.

In their Joint Statement of Answer, PaineWebber and Regan requested dismissal of this proceeding, expungement of this claim from Regan's record, an Award in their favor of the costs and disbursements of this proceeding, and such other and further relief as is just.

In his Statement of Answer, Ewanouski requested that the Panel dismiss the Statement of Claim, with prejudice, and award him all reasonable costs and expenses, including reasonable attorneys' fees, forum fees, and such further relief as the Panel may deem just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Regan did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure and, having answered the claim, is bound by the determination of the Panel on all issues submitted.

On December 29, 2000, Claimants informed NASD Dispute Resolution, Inc. that they were dismissing their claims against Regan, without prejudice.

On January 17, 2001, Claimants informed NASD Dispute Resolution, Inc. that they were dismissing their claims against PaineWebber.

During the hearing in this matter, Ewanouski made a motion to dismiss at the conclusion of Claimants' case. The Panel denied this motion.

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.

AWARD

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

1. Claimant's claims are hereby dismissed in their entirety.
2. All other requests for relief are hereby denied.
3. Upon confirmation of this Award by a court of competent jurisdiction, NASD Regulation, Inc. shall expunge all references to this arbitration from the permanent CRD records of Respondent Ewanouski.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$ 150.00
--------------------------	-------------

Member Fees

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

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$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:

One (1) Pre-hearing session with Panel x \$400.00	= \$ 400.00
Pre-hearing conference: October 17, 2000	1 session

Two (2) Hearing sessions x \$400.00	= \$ 800.00
-------------------------------------	-------------

Hearing Date: January 18, 2001	2 sessions
--------------------------------	------------

Total Forum Fees	= \$1,200.00
------------------	--------------

The Panel has assessed all of the forum fees jointly and severally against Claimants.

Fee Summary

1. Claimants be and hereby are jointly and severally liable for:

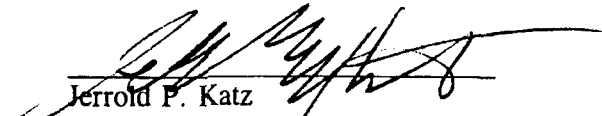
Initial Filing Fee	= \$ 150.00
<u>Forum Fees</u>	<u>= \$1,200.00</u>
Total Fees	= \$1,350.00
<u>Less payments</u>	<u>= \$ 660.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 690.00

2. PaineWebber be and hereby is solely liable for:

<u>Member Fees</u>	= \$2,600.00
Total Fees	= \$2,600.00
<u>Less payments</u>	= \$1,600.00
Balance Due NASD Dispute Resolution, Inc.	= \$1,000.00

All balances are due and payable to NASD Dispute Resolution, Inc.

Concurring Arbitrators' Signatures



Jerrold F. Katz
Public Arbitrator, Presiding Chair

Feb 21, 2001
Signature Date

John R. Thompson
Public Arbitrator

Signature Date

Thomas P. Lescoe
Industry Arbitrator

Signature Date

February 28, 2001
Date of Service (For NASD office use only)


Concurring Arbitrators' Signatures

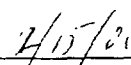
Jerrold P. Katz
Public Arbitrator, Presiding Chair

Signature Date

John R. Thompson
Public Arbitrator

Signature Date

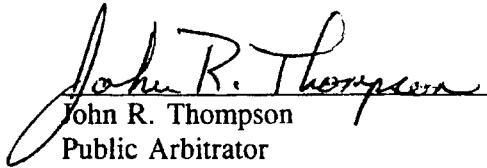

Thomas P. Lescoe
Industry Arbitrator


Signature Date

February 28, 2001
Date of Service (For NASD office use only)

Concurring Arbitrators' Signatures

Jerrold P. Katz
Public Arbitrator, Presiding Chair


John R. Thompson
Public Arbitrator

Signature Date

Feb. 20, 2001
Signature Date

Thomas P. Lescoe
Industry Arbitrator

Signature Date

February 28, 2001
Date of Service (For NASD office use only)