

**AWARD**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between

Name of Claimants

Jack Modzelewski and  
Susan Kiner

and

99-00641  
Chicago, Illinois

Name of Respondents

PaineWebber, Inc.  
Terry Lee Phillips

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**REPRESENTATION OF PARTIES**

Jack Modzelewski and Susan Kiner ("Claimants") were represented by Stuart R. Berkowitz, Esq., Platke and Berkowitz, L.L.P., St. Louis, Missouri.

PaineWebber, Inc. ("Respondent PaineWebber") and Terry Lee Phillips ("Respondent Phillips")(collectively as "Respondents") were represented by Andrew J. Melnick, Esq., PaineWebber, Inc., Weehawken, New Jersey.

**CASE INFORMATION**

The Statement of Claim was filed on or about February 16, 1999. Submission Agreement of Claimants Jack Modzelewski and Susan Kiner was signed on February 1, 1999.

Statement of Answer was filed by Respondents PaineWebber, Inc. and Terry Lee Phillips on or about May 11, 1999. Submission Agreement of Respondent PaineWebber, Inc. was signed on April 15, 1999 by Andrew Melnick. Submission Agreement of Respondent Terry Lee Phillips was signed on May 4, 1999.

**CASE SUMMARY**

Claimants alleged that Respondent Phillips made unsuitable investment recommendations, engaged in churning, and was negligent and/or acted fraudulently. It was also alleged that Respondent PaineWebber, Inc. failed to properly supervise Respondent Phillips.

Respondents denied the allegations set forth in the Statement of Claim. Respondents stated that Mr. Modzelewski had engaged in an aggressive investment strategy that was devised, implemented and

approved by Mr. Modzelewski. It was specifically stated that Respondents warned Mr. Modzelewski of the risks associated with his chosen investment strategy.

### **RELIEF REQUESTED**

Claimants requested a joint and several award against Respondents as follows:

1. Compensatory damages estimated to be in the amount of \$600,000.00.
2. Pre award and post award interest from the date of the original investments as allowed by law.
3. Costs of arbitration and expenses, including consulting fees, expert witness fees, filing fees and any other costs deemed reasonable and just.

Respondents requested that the claims asserted against them be dismissed, expungement of the claim from Mr. Phillips' record, and an award in their favor of the costs and disbursements of this proceeding and such other and further relief as is just.

### **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(s) remain on file with the NASD Dispute Resolution, Inc. (the "NASD").

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, if any, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The claims asserted in this matter shall be and hereby are denied in their entirety.
2. In addition, the Panel directs the NASD to expunge any reference to this proceeding from Terry Lee Phillips' CRD record. The panel recommends the expungement of all reference to the above captioned arbitration from Respondent Terry Lee Phillips' registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Terry Lee Phillips must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.

4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

### **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 = \$250.00

#### **Member Fees**

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

Member surcharge	= \$2,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$3,500.00

#### **Forum Fees and Assessments**

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

One (1) Pre-hearing session(s) with Panel x \$1,000.00	= \$1,000.00
Pre-hearing conference(s): April 19, 2000	1 session
Five (5) Hearing sessions x \$1,000.00	= \$5,000.00
Hearing Date(s): August 16, 2000	2 sessions
August 17, 2000	2 sessions
August 18, 2000	1 session
Total Forum Fees	= \$6,000.00

The Arbitration Panel has assessed \$3,000.00 of the forum fees to Jack Modzelewski and Susan Kiner.

The Arbitration Panel has assessed \$3,000.00 of the forum fees to PaineWebber, Inc.

**Fee Summary**

Claimants, Jack Modzelewski and Susan Kiner, shall be and hereby are liable for:

Initial Filing Fee	= \$ 250.00
<u>Forum Fees</u>	= \$3,000.00
Total Fees	= \$3,250.00
<u>Less payments</u>	= \$1,250.00
Balance Due NASD Dispute Resolution, Inc.	= \$2,000.00

Respondent, PaineWebber, Inc., shall be and hereby is liable for:

Member Fees	= \$6,100.00
<u>Forum Fees</u>	= \$3,000.00
Total Fees	= \$9,100.00
<u>Less payments</u>	= \$2,600.00
Balance Due NASD Dispute Resolution, Inc.	= \$6,500.00

**All balances are due to NASD Dispute Resolution, Inc.**

Dated:

/s/ Susan E. Einspar-Wayne  
Susan E. Einspar-Wayne, Esq.  
Public Arbitrator, Presiding Chair

September 5, 2000

/s/ Michael S. Matek  
Michael S. Matek, Esq.  
Public Arbitrator

September 1, 2000

/s/ Michael Howard Rosenbloom  
Michael Howard Rosenbloom  
Industry Arbitrator

August 31, 2000

NASD Dispute Resolution, Inc.  
 Arbitration No. 99-00641  
 Award Page 4 of 4

The Arbitration Panel has assessed \$3,000.00 of the forum fees to PaineWebber, Inc.

### Fee Summary

Claimants, Jack Modzelewski and Susan Kiner, shall be and hereby are liable for:

Initial Filing Fee	NASD REGULATION	= \$ 250.00
Forum Fees		= \$3,000.00
Total Fees		= \$3,250.00
Less payments		= \$1,250.00
Balance Due NASD Dispute Resolution, Inc.		= \$2,000.00


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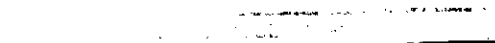
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Dated:

9/5/00

  
 Susan E. Einspar-Wayne, Esq., NASD Dispute Resolution, Inc.  
 Public Arbitrator, Presiding Chair

PaineWebber, Inc., shall be and hereby is liable for:

  
 Michael S. Matek, Esq., NASD Dispute Resolution, Inc.  
 Public Arbitrator

  
 Michael Howard Rosenbloom  
 Industry Arbitrator

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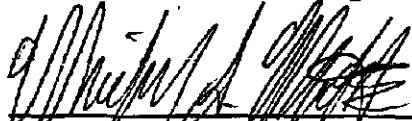
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Balance Due NASD Dispute Resolution, Inc.	= \$6,500.00

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Dated:

Susan E. Einspar-Wayne, Esq.  
Public Arbitrator, Presiding Chair



Michael S. Matek, Esq.  
Public Arbitrator

Michael Howard Rosenbloom  
Industry Arbitrator

9-1-00

NASD Dispute Resolution, Inc.  
Arbitration No. 99-00641  
Award Page 4 of 4

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Susan E. Einspar-Wayne, Esq.  
Public Arbitrator, Presiding Chair

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Michael S. Matek, Esq.  
Public Arbitrator

  
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Michael Howard Rosenbloom  
Industry Arbitrator

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P-31-2000  
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