

AWARD
NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Thomas J. Geisse

and

99-00807
Indianapolis, Indiana

Name of Respondents

PaineWebber, Inc.
Richard C. Lenihan

REPRESENTATION OF PARTIES

Thomas J. Geisse ("**Claimant**") was represented by Joseph L. Claypool, Esq., Ancel & Dunlap, LLP., Indianapolis, Indiana.

PaineWebber, Inc. ("**Respondent PaineWebber**") and Richard C. Lenihan ("**Respondent**") were represented by Andrew J. Melnick, Esq., PaineWebber, Inc., Weehawken, New Jersey.

CASE INFORMATION

The Statement of Claim was filed on or about February 23, 1999. Submission Agreement of Claimant Thomas J. Geisse was signed on February 22, 1999.

Statement of Answer was filed by Respondents PaineWebber, Inc. and Richard C. Lenihan on or about May 20, 1999. Submission Agreement of Respondent PaineWebber, Inc. was signed on May 17, 1999 by Andrew J. Melnick. Submission Agreement of Respondent Richard C. Lenihan was signed on May 17, 1999.

CASE SUMMARY

Claimant alleged that Respondent Lenihan recommended unsuitable transactions; failed to properly execute trades as directed; made false and misleading representations; failed to follow instructions of Claimant; acted negligently and engaged in fraud. Specifically, Claimant alleged that upon the advice of Respondent Lenihan, he purchased an additional 24,000 shares of Wal-Mart through the use of margin. It was also alleged that respondent Lenihan also recommended that Claimant engage in option trading which put his Wal-Mart stock at risk. Claimant further alleged that respondent Lenihan also recommended that Claimant engage in a covered short sale of a portion of his Wal-

Mart holdings. It was alleged that Claimant had advised Respondents that he wished to maintain his position in Wal-Mart prior to and after the delivery of his Wal-Mart securities. As a result of Respondent Lenihan's recommendations, Claimant's Wal-Mart securities were liquidated against his wishes, which triggered tax consequences unknown to Claimant at the time of the transactions. Finally, Claimant alleged that Respondent PaineWebber failed to properly transfer his account to another brokerage firm.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated as follows:

Claimant is a disappointed investor seeking to undo his decision to sell 74,000 shares of Wal-Mart he owned in February 1997 because the stock rose sharply in the months and years after his "sell" decision. Those sale transactions were indisputably ordered and approved orally and in writing by Claimant. Mr. Geisse has an extensive background in the retailing sector in general and Wal-Mart in particular, and had years of experience actively trading Wal-Mart stock prior to opening an account at PaineWebber. Claimant had actively traded his Wal-Mart stock-including selling short and using margin - for a number of years prior to trading at PaineWebber. After seeing Wal-Mart trade no higher than \$29 for several years, Claimant decided in February 1997 to liquidate his holdings and place his investments with an outside money manager who had successfully managed his siblings' sizable stock portfolios.

RELIEF REQUESTED

Claimant requested that the Arbitration Panel render an award in his favor and against Respondents as follows:

- a. The sum of \$321,254.00, jointly and severally, against all of the Respondents, representing compensatory damages for the conduct set forth in the Statement of Claim;
- b. As to Count VIII for liability under the Indiana Securities Laws:
 - i. Rescission of the transactions constituting this claim, nullifying the Wal-Mart (plus accrued dividends including stock dividends or splits) resulting in the calling away of Claimant's Wal-Mart stock on March 17 and 24, 1997, less the benefits received by Claimant in regards to the receipts of cash plus interest at the statutory rate from March 24, 1997 through and including the date of this Statement of Claim; or in the alternative
 - ii. Compensatory damages as stated in "a" above, plus, pursuant to applicable Indiana statute, a sum to include costs and reasonable attorneys' fees as provided in the applicable statutes;

- c. As to Count IX, Violation of Indiana Code, compensatory damages reflecting the economic damage (loss) of Claimant, which amount shall be trebled under the applicable statute, together with costs and reasonable attorneys' fees as provided therein;
- d. As to Count X, an amount to be determined, jointly and severally, against Respondents, representing punitive damages;
- e. As to all Counts, a sum to be determined, jointly and severally, against Respondents representing interest due Claimant on the amounts of damages set forth above; and
- f. For such other relief as may be deemed just and proper under the circumstances presented herein.

Respondents requested dismissal of this proceeding, expungement of the claim from Mr. Lenihan's record, and an award in its favor of the costs and disbursement of this proceeding and such other and further relief as is just.

OTHER ISSUES CONSIDERED & DECIDED

During the first day of hearing, Claimant advised the Arbitration Panel that all causes of action except the claim for violation of the Indiana Securities Laws were withdrawn.

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 Regulation, Inc. Office of Dispute Resolution (the "NASD").

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. The Arbitration Panel finds in favor of Respondents and against Claimant on the remaining cause of action.
- 2. In addition, the Panel directs the NASD to expunge any reference to this proceeding from Richard C. Lenihan's CRD record. The panel recommends the expungement of all reference to the above captioned arbitration from Respondent Richard C. Lenihan's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Richard C. Lenihan 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 Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$300.00

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 = \$3,600.00
Pre-hearing process fee = \$ 600.00
Hearing process fee = \$5,000.00

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 \$1,500.00 = \$1,500.00

Pre-hearing conference(s): October 15, 1999 1 session

Five (5) Hearing sessions x \$1,500.00 = \$7,500.00

Hearing Date(s): May 9, 2000 2 sessions
May 10, 2000 2 sessions
May 11, 2000 1 session

Total Forum Fees = \$9,000.00

The Arbitration Panel has assessed \$4,500.00 of the forum fees to Thomas J. Geisse.
The Arbitration Panel has assessed \$4,500.00 of the forum fees to PaineWebber, Inc.

Fee Summary

Claimant, Thomas J. Geisse, shall be and hereby is liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$4,500.00</u>
Total Fees	= \$4,800.00
<u>Less payments</u>	<u>= \$1,800.00</u>
Balance Due NASD Regulation, Inc.	= \$3,000.00

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

Member Fees	= \$ 9,200.00
<u>Forum Fees</u>	<u>= \$ 4,500.00</u>
Total Fees	= \$13,700.00
<u>Less payments</u>	<u>= \$ 9,200.00</u>
Balance Due NASD Regulation, Inc.	= \$ 4,500.00

All balances are due to NASD Regulation, Inc.

Dated:

/s/ Monette E. Draper

Monette E. Draper, Esq.
Public Arbitrator, Presiding Chair

May 12, 2000

/s/ Judith Stilz Ogden

Judith Stilz Ogden, JD
Public Arbitrator

May 12, 2000

/s/ John W. Guy

John W. Guy
Industry Arbitrator

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Public Arbitrator, Presiding Chair

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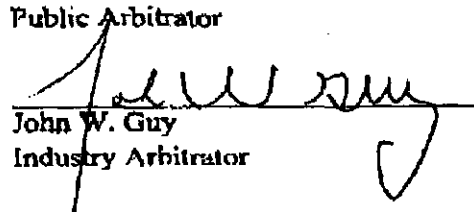
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